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GROUNDWORK
OF
POLITICAL SCIENCE

P. C. MUKHERJEE, M.A.

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BY

P. C. MUKHERJEE, M. A.

AUTHOR OF UNIVERSITY QUESTIONS AND ANSWERS
ON POLITICAL PHILOSOPHY.

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CONTENTS.

CHAPTER I

THE SCOPE AND METHOD OF POLITICAL SCIENCE

Political Science Professor Leacock has defined Politics as the 'science which deals with government' The word Government conveys the idea of submission to authority Political science, therefore deals with mankind as organized political units The organization, however differs in form and in its varying degree of complexity From a crude beginning it has developed into an intricate mechanism of the modern national state

Other writers have defined it as a 'science of the state'. It includes the study of a historical survey of the origin of the state, its historical evolution from simple to complex, as also the development of the political ideas and theories Its field also lies in the examination and analysis of the fundamental nature of the state, its organization, its relation to the individuals that compose it, and its relation to other states

This is one aspect of the political science, the study of the forms of state as it is, and as it existed in the past, but Politics, as stated by Macaulay, "is an experimental science, and therefore it is like all other experimental sciences, a progressive science" The study of Political Science is concerned, therefore not only with what it is, but with what the state ought to be. The physical and social environments of the people are constantly changing and the science of politics must take account of these social movements 'The Political science", says Professor Leacock, 'must be of a dynamic and not a static character"

It is thus an investigation of what the state had been, an analytical and comparative study of what it is, and finally a philosophical study of what it should be In other words, it is a progressive or growing science which is shaped in the present on the basis of the past to an idealistic conception of the future As a science, it is not so perfect as the physical

sciences, for the reason that it deals with complex actions and motives of men which are constantly undergoing change. Still it is ranked as a science, and as Dr. Garner observes, "it renders practical service by deducing sound principles as a basis for wise political action, and by exposing the teachings of a false political philosophy."

Relation to allied Sciences. Political science is concerned with human societies as constituted under some form of government, and is therefore closely related to other sciences such as Sociology, History, Economics, and Ethics.

Sociology —It is a science of human society, and deals with man in all his environments, such as, social, political, commercial and religious. It is not restricted to any particular class of people or locality. Political science on the other hand, deals with only political aspects of a society, and is confined to a particular portion of society organized within a definite territory. It is more or less a branch of Sociology, and as Janet has remarked, it is "that part of social science which treats of the foundations of the state, and of the principles of government."

History —It is a record of events and institutions as they existed in the past, and it helps the study of political science by supplying a major part of raw materials to build its ground work. The past history of the state forms a data for its future structure The state as it is, throws a good deal of light on what a state should be. Prof. Seeley has, therefore, very truly remarked, "political science without history is hollow and baseless, or to put in rhyme, history without political science has no fruit, and political science without history has no root" Sidgwick would, however, give the historical study of political science a secondary place, as it does not determine the ultimate end of the state. Political science deals with the state as it ought to be, whereas history is concerned with what has been. History is not 'past politics' in as much as the history of art, of science, of language, of literature etc have no concern with political science Similarly all Political science is not history; the purely philosophical and deductive theories of political science cannot be placed under the category of history.

Economics :—The science of Economics, as it deals w

production, distribution and consumption of wealth, has no relation with *political science* There are however, some activities of the state which indirectly trench upon the field of Economics, and the two sciences appear to have a common field of action in some respects Taxation, currency, government management of industries, and other commercial activities, such as monopolies, factory laws etc are no doubt within the province of Economics, but they are regulated and modified to a certain extent by forms of Government existing in different states

Ethics —It is a science of human conduct, and is concerned with rightness and wrongness of all actions of the individual It is a moral code which governs both internal and external actions of men Political science, on the other hand, deals with the state, and with the individual in so far as his outward activities in relation to the state are concerned This distinction between moral and political laws was overlooked in the ancient state when custom was the *source of all laws Gradually as civilization advanced custom* gave way to conscience or individual morality on the one hand, and to law or political morality on the other There is a close connection between the two sciences, as Political science can not do without Ethics "Ethics', says Sidgwick, is concerned with Politics so far as the well being of any individual man is bound up with the well being of his society'

Divisions of Political Science. Bluntschli has divided the science into two broad divisions, viz (i) Public law and (ii) Politics. 'Public law," he says, "deals with the state as it is, that is, with its normal arrangements and permanent conditions of its existence' Politics, on the other hand, seeks to define the life and conduct of the state, pointing out its end and teaching the means which lead to these ends "Public law asks what conforms to law Politics, whether the actions of the state conform to the end in view"

Prof Gettell has defined Political Science as the science of the state He has subdivided it under the following heads —

1 "Historical Political science,—the origin and development of political forms," e g the historical evolution of the state

2. "Political theory,—a philosophic study of the fundamental concepts of the state," e g. theories as to the origin of the state.

3. "Descriptive Political science—an analysis and description of existing political forms," which chiefly concern with the classification of the constitution of states into legislature, executive, and judicatary.

4. "Applied Political science—the principles that should control the administration of political affairs, the proper province and functions of government."

Prof Sidgwick maintains that the theory of Politics is concerned with human societies, regarded as possessing government—that is, societies of which the members are accustomed to obey, at least, in certain matters the directions given by some person or body of persons forming part of the society. It has two main divisions:—(1) one is concerned with the functions of government, internal and external. The internal functions are the actions of government on the members of the community governed, and the external functions are its actions in relation to other communities and individuals. (2) The other is concerned with its structure or constitution.

Methods of Political Science The scientific study of the state may be undertaken from different points of view, and in different ways. There are two sound, and two false methods of scientific enquiry. The sound and correct methods are Historical and Philosophical, and the false or perverse methods are Empirical and Ideological.

1. *The Historical Method*—It does not simply state the facts of the past and record good and bad actions of men, but it tries to grasp the principles of political wisdom from the study of past history and life of the state. As Bluntschli has observed, "It recognises, explains, and interprets the inner connection between past and present, the organic development of national life, and the moral idea as revealed in history. It starts from the actual phenomena, but regards them as living and not dead". This method, therefore, advises the state not to remain stationary, but to adapt itself to the circumstances and needs of time in the light of experience gained from the past. Machiavelli was the great exponent of this

method, and the modern English exponents are Seeley and Freemen

The chief advantage of this method is that it furnishes abundant materials to compare and come to a definite conclusion but there is the corresponding danger of losing unity in the midst of diverse multiplicity of facts The past is generally *exaggerated*, the present *is* oppressed with weight of precedents, and the future is totally ignored

The perversion of this method is the *Empirical method* which is one sided, and holds to the outward form to the letter of the law, or to the apparent fact It hinders the progress of the state, as it tends to stick closely to the past and thus weakens the growth of the state

According to Sidgwick, the primary aim of Political science is to determine what *ought* to be, so far as the constitution and action of government are concerned as distinct from what *is or has been* "History", he says, 'cannot determine for us the ultimate end and standard of good and bad, right and wrong in political institutions. The study of past history can not be useful in determining our choice of means for the attainment of general happiness" He gives a secondary place to this method, and therefore falls back on the other method—the deductive or the philosophical method

2 *The Philosophical Method*—It starts by making an assumption of certain general characteristics of social man in the most advanced stage of his development, and then draws deductions as to what laws and institutions would conduce to the welfare of such beings in their social relations It then sees weather its deductions coincide with actual facts of experience Thus it coincides idea with fact Rousseau, Mill and Sidgwick are the great exponents of this method The real danger lies in the fact that in the swift flight of free thought, the philosophers make barren theories and formulas ignoring actual facts of nature

This is *Ideology*, the perversion of the philosophical method It is quite an abstract method as it does not pay any regard to the facts of actual political society—e g Plato's *Republic* In times of revolution these abstract doctrines tend to break up and destroy existing political institutions, thus at the French Revolution, the doctrine of liberty, equality

and fraternity helped to break the bounds of law. (Rousseau and Bentham.)

Therefore in the study of politics, the true philosophical and historical method must supplement and correct each other. "The genuine historian must recognise the value of philosophy, and the true philosopher must equally take counsel of history." Bodin, Vico, Bacon and Burke are the representatives of the philosophic-historical method.

3. *The Comparative Method.* This method aims to study and compare the various events of the world's history, and tries to find out common causes and effects. It makes use of all the processes of inductive logic for its investigation. Aristotle first made use of the method, and Montesquieu, De Tocqueville and Bryce are exponents of this method. Practically this method has been supplemented by the historical method mentioned above. The chief danger of comparative method lies in the fact that it sticks only to general principles, and overlooks the special conditions arising out of different circumstances, such as diversity of temperament and genius of the people, economic and social conditions, moral and legal standards, and other aspects of the people.

4. *The Sociological, the Biological, the Psychological and the Juridical methods.*—These are not methods of study of political science, but *points of view* according to which various political phenomena can be explained.

Questions.

1. "Political Science deals with Government" (*Leacock*).

The Science of Politics is an experimental science, and therefore it is like all other experimental sciences a progressive science. (*Macaulay*).

Discuss carefully these statements with regard to the scope and method of Political Science. (C. U. 1915.)

2. What are the divisions of Political Science, and what branch of study does each embrace? (C. U. 1911.)

3. "The scientific study of the state may be undertaken from different points of view, and in different ways. There are two sound methods of scientific enquiry, and two false methods." Explain. (C. U. 1909).

CHAPTER II.

THE NATURE OF THE STATE

Definition of State 'A state is a people organised for law within a definite territory.' This is the formal definition laid down by Woodrow Wilson More precisely, Prof Holland defines state as a 'numerous assemblage of human beings, generally occupying a certain territory amongst whom the will of the majority, or of an ascertainable class of persons is by the strength of such a majority or class, made to prevail against any of their members who oppose it' Dr Garner defines, 'state' as follows —"The state is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organised government to which the great body of inhabitants render habitual obedience."

Nature of the State. The state is neither a divinely created nor a deliberate work of man It comes into existence unconsciously as the result of a process of natural evolution 'The state', says Prof Burgess "is a gradual and continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind"

The state creates and maintains liberty It has a sole sovereign authority, and expresses its will in the form of law It needs no moral justification The state creates a government, determines its relation to other states, and is the source of all rights and enforcer of all obligations. The political concept of the state can be easily understood from its nature and essential characteristics.

Common characteristics and constituent elements of the state The common characteristics of all states are the following —

1. *Territory* :—The idea of having a definite territory plays an important part in the formation of a state. The possession and control over a definite portion of earth's surface are the fundamental conditions for the existence of a state. The hunting and the pastoral stage of development of a people do not signify any notion of state. The Jews who have scattered all over the earth, without possession of any definite territory, can not be said to have any state. There is no fixed limit to the extent of the territory of a state. The Greeks confined their state within the city, the Romans aspired to the whole world, and the modern states have emphasised upon natural boundaries and geographical units.

2. *Population* :—The second characteristic of a state is that there must be a population to inhabit the definite territory. An uninhabited portion of the earth, taken in itself, cannot form a state. There is no normal number for the size of the population of a state. Rousseau's number of ten thousand, or Aristotle's maximum at one hundred thousand is equally absurd. A modern state, for example, the British Empire, holds an alarmingly greater number of people. Territory and population make up the *physical elements* of the state.

3. *Government* :—Given a population inhabitating a definite territory, there must be some sort of organization by which the state may exercise authority over the individual and express its will. Organised government and independence of external control constitute the *political element* in a state. A "numerous assemblage of human beings" to use Prof. Holland's phrase, does not constitute a state. Either as a result of natural consent, or as a result of compulsion, there should be some form of political machinary or government, which would compel obedience in order to form a state. *The spiritual element* of state consists in this rendering habitual obedience to a common supreme authority or agency through which the collective will is expressed and enforced. A race which has not yet settled down into permanent obedience to any common superior, would not acquire this habit under any form of government, and without a government there can not be a state. The state therefore must have an organization or machinery or government through which its purposes would be formulated, and its sovereignty established.

The government is therefore an outward manifestation of the state and an organ of its political unity

4 *Political Unity* —Unity involves two ideas, namely, internal cohesion and external independence There may be different divisions and classes within a territory but if the component parts form a coherent whole politically, they constitute a state Geographic causes, common interests, the feeling of nationality, and political expediency are among the causes that create political unity and when it is outwardly realised in the creation of government a state exists The old German Empire was a state although it was a confederation of several semi independent units The other aspect of unity is external independence, that is the territory and population of a state must not be under the control of any wider political unit The so-called 'states of the United States are not strictly states, for they are under the wider organization of the United States which is really a state

5 *Sovereignty.* Organization and unity are the real essence of the state as they constitute its sovereignty By sovereignty is meant absolute authority internally and freedom from external control Without sovereignty the state is a mere voluntary association There must be a supreme authority in the state to enforce obedience, and this authority is the sovereign power in the state This sovereign power of the state or in other words its sovereignty is exercised through one of the organs of the state *viz* the government to which such power has been delegated by the state (Note the distinction between state and government)

6 *Permanence and Continuity* —Burgess attributes to the state the characteristics of permanence and continuity It does not mean that a particular state continues for ever In fact a state can be terminated in various ways By permanence is meant that the form of government and the internal organization of the state might change more than once but the corporate existence of the state continues, and is not affected by such changes A revolution might sweep away a monarchy and establish a republic, as the French Revolution did , but the state continued to exist with but a different type of government

N B. The English constitutional maxim, "*the kin*,

never dies" denotes the same principle. It means in the first place, that the throne of England is never kept vacant. As soon as a king dies, his successor immediately steps into the throne. The maxim grew out of a confused idea of state and government handed down from Hobbes, which regarded the immediate succession of a king on the death of his predecessor as necessary to the continuance of the state. In the second place, it means that the death of a king is simply a change in the government, and not a break in the continuity of the state. The sovereignty of a state is maintained throughout and is as permanent as the state itself. As Gilchrist puts it, "kings come and go, but the state continued to exist as long as the common mind on which it is founded is able to express itself."

The state as a juristic person.—Some of the German writers have gone to the length of identifying the state with a real juristic person. In the eye of Public law the state is the bearer of all public rights and enforcer of all obligations.

The organic nature of the state.—See the organic theory of the state.

Questions.

1. Express concisely and accurately the meaning of the political concept 'state'. (C. U. 1919, 1920).

2. Define the state. (C U. Hon. 1910).

3. What are the common characteristics of all states (C. U. 1912).

4. What are the essential attributes of the state (C. U. Hon. 1913).

5. Dr. Garner defines "state" as follows :—

"The state as a concept of political science and constitutional law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience", and then goes on to remark that "the essential constituent elements—political, physical, and spiritual—of the modern state are all brought about in this definition'. Explain how. (C U. 1923)

6. Comment on the following statement as applied to the British constitution :—"The king never dies." (C. U 1926)

CHAPTER III

PHYSICAL BASIS OF STATE.

Physical environments and its influence Man himself is a part of nature, and it is likely, that he is powerfully influenced by his *surroundings* The physical environments go in a great way to influence the character of the people in a state These may be subdivided as follows —

1 The contour of the earth's surface

2 Climate

3 Resources and fertility of soil.

4 The general aspects of nature

1 *The contour of the earth's surface* —This includes the arrangement of land and water, areas, the size and position of mountains and rivers These have enormous influence on state existence In general, the areas of states tend to coincide with geographic units The people living within the geographic units are protected by natural barriers from outside continent, and they foster common interests and that consciousness of unity which lie at the basis of all states

Isolation of state determines whether a state is to develop by itself apart from all external influences The British Isles being cut off by natural barriers from other states, developed its own institutions India is also bounded on all sides by natural barriers The great Himalayan ranges serve as an effective protection on the north, but there are two weak spots, namely, the Khybar and Bolan passes, through which India had been a prey to successive foreign invasions Inspite of these invasions India did not merge into any foreign state It developed its own institutions and maintained its nationality and religion This was mostly due to its peculiar position as being practically isolated from all other surrounding states

2 *Climate* —Generally speaking, extremes of climate are not favourable to higher forms of state existence Hot

countries make men passionate, imaginative, indolent, and slothful Cold countries make men energetic, intelligent and enterprising. (*cf.* England and India. Note that in India, we have an admixture of both hot and cold climate).

The state is also indirectly influenced by the effect of climate on birth and death rates.

Resources and fertility of soil:—Those people who possessed mineral resources had better advantages over tribes that retained crude implements of wood and stone England developed its industries as it had plenty of coal and iron mines within the country. The mineral resources of India are also abundant and varied, but heitherto, they were embedded in the unexplored regions of the earth With the growth of industrialism, India has now begun to tap out these resources, and is making a headway to build up its industry as fast as it could

Fertility of soil is also instrumental in promoting the welfare of a society in a state. *But fertile soil also tends* to produce indolence, degradation of labour, and inequality of property. Indian soils are generally very fertile, and that is why the people are so ease-loving and unenterprising.

4. *General aspects of nature*:—In those parts of earth where violent and terrible aspects of nature prevail,—earthquake, volcanoes etc, men become imaginative, fearful, hesitating, and superstitious. On the contrary, where peaceful aspects of nature flourish, men become thoughtful and reasonable, rational and religious.

Size of Territory of State. There can be no limit to the size of territory of a state. The Greeks looked city states as there ideal. The Romans made conquest and extension their aim. The Teutons brought forth the idea of national state, and thus combined both geographic and ethnic unity Unless ethnic differences prevent, the modern tendency is to combine several states within one geographical unity into a single state. Alsace Loraine was taken away from the French by the Germans on the plea that its inhabitants were Germans. On the other hand, where one state covers several geographical unities and ethnic differences predominate, strong effort is usually made to secure ethnic unity. In several German colonies, attempts are being made to Germanise the

entire population Thus smaller states are being absorbed or brought into an alliance with their powerful neighbours A large state has however, the disadvantage of being out of touch with the central authority, and of being attacked on different positions But the difficulties can be removed by means of improved communication, development of local self government and responsible government

Questions

1 How do physical environments influence the character of the people in a state? Illustrate your answer by reference to India and the British Isles (C. U 1911)

CHAPTER IV.

STATE, GOVERNMENT, PEOPLE, NATION AND NATIONALITY.

Distinction between State and Government. State is a "sovereign community politically organized for the promotion of common ends and the satisfaction of common needs, while the Government is the collective name for the agency, magistracy, or organization, through which the will of the state is formulated, expressed, and realized" (Garner).

All the citizens of the political community constitute the state, while a fair proportion comprise the government. The government include all those persons only who are occupied in expressing and administering the will of the state.

The state is a sovereign body with unlimited powers, where as government does not possess sovereignty or any original unlimited authority. Its powers are derivative being delegated by the state through its constitution.

Governments might change through revolutions, extinction of dynasties or other ways, and one form of government might be replaced by another, but such changes do not affect the existence of the state. The state is permanent and absolute. It continues inspite of its governmental changes.

The 'state' is strictly an abstract term, whereas the term 'government', is concrete. It is an outward manifestation of the state.

Concept of People. A people comes into being by a slow and a gradual process to some extent psychological. With the development of the unconscious process, the individuals acquire a similarity in habits and customs of life, and form a distinct civilization which separates them from the rest of mankind. A mere congregation of men without this process can never give rise to a disunct people The essence of a people lies, therefore, in its particular civilization—*cultur* as the Germans say, in its common spirit and character which

distinguishes it from other peoples. *The sense of association* and unity is present there but not that legal or political unity which goes to make a nation

Bluntschli gives a comprehensive definition of 'People as —'*It is a union of* masses of men of different occupations and social strata in a hereditary society of *common spirit, feeling and race* bound together specially by *language and customs, in a common civilization* which gives them a sense of unity and distinction from all foreigners, quite apart from the bond of the state

Concept of Nation Burgess gives an abstract definition of 'Nation According to him it is ' a population of an ethnic unity inhabiting a territory of a geographic unity' By geographic unity is meant a population separated from other territory By ethnic unity is meant a population having a common language and literature, a common custom, and a common consciousness of rights and wrongs ' Now a days English and American usage gives to the term 'nation' a political significance It comes into being with the creation of the state, and denotes a body of individuals organised under a single government There is that consciousness of political connection and unity which goes to see the upholding of the state. A 'Nation' is therefore a 'People' politically organised in a state

N B The term 'nation' in the German sense denotes a population having common bonds of race, language, religion, history and traditions without any regard to their political combination as corresponding to the English word 'people' In order to avoid confusion, the modern nomenclature 'nationality' has been introduced to convey the same meaning as 'people' The English equivalent for the German 'nation' is 'nationality' and the German equivalent for the English 'nation' is volk'.

State not identical with Nation The English word 'nation' combines in itself all the unity of the people arising from common bonds of race, religion, language, history and traditions together with the unity of political organization It is distinguishable from 'state', which is concerned with political organization only

The term, 'nation' has a broader significance than 'state'.

It is the state *plus* something else : the state looked at from a certain point of view, viz, that of the unity of the people organised in one state.

The state is an artificial political organization, and it may contain one or more nations or none of them. All nations are generally states, but all states are not nations. Despotism knows nothing of nations, but subjects. A state may contain people whose political consciousness has not yet developed to entitle them to be called nations.

Again a state may contain several nationalities—the United States, the British Empire, Switzerland, Yugo-Slavia being conspicuous examples. "But generally where the geographic and ethnic unities coincide, or very nearly coincide, the nation is almost sure to organise itself politically to become a state."

Concept of Nationality Nationality, according to Gettell, "denotes a population having common bonds of race, language, religion, tradition and history." These influences create a feeling of unity which binds individuals into a homogeneous entity. It is that spiritual sentiment which wields a body of individuals into a national unity as distinguished from a rigid political control ; and in the words of Prof. Burgess, it is a "population of ethnic unity inhabiting territory of a geographic unity." A portion of mankind may be said to constitute nationality, if they are united among themselves by common sympathies and community of tradition, which make them co operate with one another more willingly than with other people.

Principles and Elements of Nationality. Many forces are at work to unite the masses into a common bond of nationality They include the following :—

1. *Religion* :—It formed at first a chief factor, as those who would not believe in the state religion were treated as foreigners But with the growth of tolerance and freedom of belief people have developed national feeling inspite of religious differences between them Germans have united as a nation apart from the fact that some of them are Protestants and others are Roman Catholics. In India there is no promising signs of unity amongst the different religious communities, and their sense of unity might develop with the growth of political consciousness of the people.

2 *Common descent and sameness of race* —These are no longer necessary elements of nationality Germans and the English practically belong to the same race, but they are distinct nationally In the United States there are various races, but all of them are united nationally as 'American' If nationality is to be dependent on this principle alone, India which contains so many castes and races, can not have nationality at any time

3 *Language* —Community of language greatly contributes towards national unity "Common language is the special mark of a people, and it keeps the sense of nationality awake and living by daily exercise" National feeling is developed, and it becomes effective through the influence of common language, literature and the press In India there is now a distinct movement for a common national language all over the country But common language does not by itself decide nationality The English and the Americans although they speak the same language do not constitute one nationality.

4 *Common country and habitation* —For a healthy growth of national feeling it might be essential that a population should live together on a fixed territory But once a national sentiment is developed it is not necessary to stick to definite place. Nationality is not wasted by migration The Jews, the Englishmen, Germans and Americans have all scattered over the length and breadth of the world without losing their creed of individual nationality

5 *Political union* —A population living under one state for a long time tends to develop national feeling The Americans trace their ancestry to 'Pilgrim Fathers, and subsequently to heterogeneous immigrants from Europe who belonged to different nationalities The subsequent generations lived on the soil under a common government, and left behind them a common history and tradition which helped to fuse together the different nationalities into one American nationality

6 *Community of interests* —A population living together generally develop common habit, common way of life, occupation and customs The common interests foster a national sentiment which outgrows petty local differences, and merge the population to a national entity.

Nationality is not the sum total of all the elements enumerated above. As Prof. Gilchrist has said, "Its natural basis may be on one element or a combination of elements : in itself it is essentially spiritual, usually seeking its physical embodiment in self-government of some form."

Rights of Nationality The following rights may be asserted by members of any nationality —

1. *Same language* :—The state should not deny a nationality its language and literature. The Romans abused their power by depriving this right to the inhabitants of their conquered territories.

2. *Same custom* :—A nation has a right to observe its own customs, if they do not conflict with the rights of the state.

3. *Same laws and institutions* :—The state should try to preserve and respect the national laws and institutions as far as they are consonant with the progress of civilization. The state should also introduce a better system of law if required.

4. *Moral and intellectual life* :—If it is attacked by power of the state, the people have a right to resist.

Nationality as a Factor in World Politics :—Community of religion, language and interests constitute nationality, and at all times in the history of the world one or other of the forces had a powerful influence in the formation of states. Beginning from crude ties of tribal kinship and religion in the early history of the body, nationality has now developed into a strong sentiment of patriotic unity and a political consciousness of being member of one body.

Growth of nationality :—'Nationality' in the modern sense of the term was not so much developed with the ancient people. Kinship, tribal feeling and religion were the bonds of union amongst them. The consciousness of a political unity arising out of a community of interests was wanting to inspire the people to a sense of national organization. The struggle of the Greeks and Persians in the early history of those countries did not disclose any national spirit. It was the common danger that led the Greek city states to take arms against the Persians, and as soon as hostilities ceased, the tie that combined the people broke away as clouds after a storm, and they relapsed into mutual antagonism.

In the middle ages, 'nationality' was at times prominent in the history of politics, but still it was not a potent factor, and played little part in the formation of states. The states in the middle ages were rather territorial than national. The king was the central figure in the state and fealty to him and to his officials was the connecting link of the people to the state. The Spaniards fought against the French for their legitimate prince and catholic religion. The Russians fought for their Czar and his holy empire against the Godless West. The Germans lost all sense of nationality in the midst of their dynastic struggles. Towards a later period, Rousseau preached his doctrine of natural right', but he ascribed the supreme powers of the state to a 'collective body' of citizens artificially combined without any sense of national unity. The French Revolution laid, however, some basis of nationality, but the Restoration gave a death blow to it. The Congress of Vienna in 1814-15 redistributed provinces, and divided people without any regard to nationality. Napoleon attempted to found a universal monarchy over Europe', and there he was resisted by some force of nationality working unconsciously amongst the masses.

Since the middle of the nineteenth century, nationality has come to be recognised *as a constituent element of state*. There appears a clear consciousness of political unity among the people, and the nations that at the beginning had partly achieved their political independence, have since been striving for the attainment of completely self-sufficing life, and the races that were wrongly held in bondage by others have been engaged in a stern struggle to obtain national independence. The spirit of nationality has come to be respected in the organization of the state. Experience has taught that wherever the claims of nationalities have been disregarded, serious consequences develop and re-adjustments become inevitable. In fact where ethnic and geographic unities coincide, the nation is sure to form into a state. Thus by welding together into national communities, and by throwing off foreign dominion, modern Germany, Italy, Greece, Serv a and Belgium have come into existence. The last great European war laid stress on the principle of self-determination', and helped to form separate states of Poland and Jugo-Slavia, and restored Alsace-Lorraine to France. After a hard struggle

Ireland had been able to throw off the foreign yoke. Armenia and India are yet "struggling and moving fast on the way" Dr. Garner wisely observes, "struggling nationalities should be encouraged to separate themselves from unnatural unions and establish independent existences".

One Nationality, one State and Universal application of the Principle of Nationality. Since the last century some of the political writers are contending for mono-national states. The states according to them should be purely national states, that is, there should be 'a state for every nation, and a nation for every state'. The principle is no doubt sound, and can be justified on the ground that each people has a right to have its own independent state, and the spirit of nationalism has hitherto helped to build up such states But the universal application of the principle so as to embrace all over the world in forming different national states is untenable There are many restrictions and objections such as those enumerated below —

Objections —(a) There is no historical and sociological justification for this view. On the other hand, most of the modern states contain population of more than one nationality.

(b) According to Bluntschli, the heterogeneous elements of the state are to its advantage, in as much as they are connecting links to civilization of other states.

(c) Prof. Gilchrist criticises on the ground, that rights of nationalities are not absolute, and as such they cannot be asserted against the rights of the state. Nationality can not claim as a matter of right a dismemberment of the state so as to incorporate homogeneous population into seperate states.

(*d*) It is the duty of the state no doubt to secure ethnic homogeneity in its population, but the state may be justified, on the ground of self-preservation or other causes, to keep different nationalities in tact within the state and distribute them in different parts of the state, or in cases of necessity, totally destroy the existence of any undesirable nationality. The United States of America and the South African Government are trying to do away with Indian elements in their states by restrictive legislation on immigration.

(*e*) All nationalities can not have separate states because

by the very process of absorption, the weaker nations merge themselves into stronger The smaller nationalities can not formulate independent states in as much as they do not possess that requisite political capacity to create and maintain a state organization

(*f*) A purely national state would insist on all the rights of nationality—its own language customs and institutions A state on a linguistic basis is simply impracticable, and is not suited to modern taste and culture National languages are however, fostered for the sake of convenience and inter change of thoughts The rights of nationality are not absolute, and many national customs and institutions are suppressed by the state for its general welfare

(*g*) As 'nationalism' is gaining ground in recent politics, there is a counter movement of 'internationalism' which also finds supporter in some quarters The final solution rests with 'federalism' which incorporates both the elements—a centralised state and independent local governments

(*h*) There are also physical difficulties in the formation of such states Unsurmountable natural barriers like high mountain ranges, deep oceans, and impenetrable forests would render the working improbable

(*i*) Political unity existing in the states are stronger than ethnic unities, and people already living peacefully under one state would not risk their liberty in small national states

(*j*) It will foment already existing race conflicts, and therefore not desirable

Aspect of Egoism and Altruism in Nationality—'Egoism'—spirit of domination, self-pride, self aggrandisement and military imperialism are the characteristics of egoistic nationalism These are the causes which led the Germans to take an aggressive part in the last great war

'Altruism'—the other extreme aspect of nationality is the unreasonable patriotic sentiment of the people which results in useless and unnecessary sacrifices True nationalism consists in moderate use of both the aspects

Indian Nationalism—In India, the common system of education, common laws and common methods of administration have developed common ideas, sympathies and aspirations

in the hearts of its people. The people now sink their social and religious differences, and meet together on the same platform to fight for a common cause. There are now growing signs of unity amongst the different communities, which will go on increasing with the growth of political consciousness of the people. The people who regard themselves as unjustly held in bondage have now been united in a stern struggle to obtain national independence at any cost. They have now commenced to act and think together, compromise their mutual disputes, and appreciate the services of those who sacrifice their time and energy for bringing about this political unity amongst them Common language is no doubt a powerful influence in national unity. In India, English serves the purpose for the present, but attempts are being made to make Hindi (Debnagri) the common national language all over the country. The expression 'Rise of Indian nationalism' means nothing but a spirit of national awakening, and it conveys the idea of a political unity of the people to determine their own destinies by all legitimate means.

QUESTIONS.

1. Distinguish between the terms 'People' and 'Nation' (C. U 1910, 1920, 1925).

2. How would you distinguish between State and Government. (C. U. 1918.

3. Discuss the theory that the state is not identical with nation. What do you understand by a 'National State' and the 'Principle of Nationality' (C. U. 1920).

4. Write notes on 'Nationality'. Would a universal principle of nationality be possible or desirable ? (C. U. 1918).

5. "There should be a state for every nation, and a nation for every state" Criticise this statement, and show how far it is practicable.

6. "Nation is a state *plus* Nationality." Amplify this statement and distinguish between State, Nation and Nationality.

7. What are the elements of Nationality ? "National feeling has the double aspect of altruism and egoism." Explain how it affected the last great war.

8. What political ideas are conveyed by the expression, "Rise of Indian Nationalism."

CHAPTER V

THE THEORIES OF THE STATE

Several theories have been put forward to explain the origin of the state The theories might be unsound or one-sided, but they have played an important part in the history of political development of state They have solved many political problems indicated the conditions and spirit of age and influenced political development in many ways

The Force Theory This theory holds that the origin of the state is to be found in the subordination of the weak to the strong A strong tribe crushes a weak tribe and dominates over it In this way a state may be formed by a continuous conquest after conquest Herbert Spencer has all along supported his doctrine of 'the survival of the fittest' on the basis of this theory Government according to him is 'an offspring of evil', and he disapproves legislation to protect the weak in their struggle against the strong In the crudest form the theory is summed up in the doctrine, "Might is the supreme right"

Value and Use —This theory contains an element of truth in so far as it seeks to explain the origin of the state Without force a state cannot exist or come into being Internally force is necessary to preserve unity, peace and tranquility within the state, and to enforce its commands and laws Externally force is required to protect the state from foreign attack Thus sovereignty of the state ultimately rests on force

The Individualists make use of this theory in their plea for unrestricted competition in trade and commerce, the Socialists, on the other hand, denounce the theory on the ground, that the present industrial organisation is detrimental to the interests of the labour

Criticism —(1) Force may be necessary for the existence of the state, but this force is not always the brute force or an organised armed force It is a moral force, the organised

will of a community that sustains the state, and the state develops in support of this latent force.

(ii) Physical force is not the permanent basis of the state. The right that is conferred by might can reasonably be said to last so long as the might lasts, and ultimately it brings on revolution which overthrows the government.

(iii) It enunciates a false notion of political obedience, as it does not make obedience a duty of the subject but only a necessity. Submission is justified so long as one is unable to do anything else than submit. As there is no free choice, morality is absent. This is practically no ground of obedience which a state would demand from its subjects.

(iv) Sovereignty implies force, and force is needed in the state, but it should derive its power from the moral sanction behind it than from the threat of compulsion on the face of it In modern democracies the force of public opinion is an important factor, and it is at the back of all state regulations.

'*Government is based on force*'.—but it is rather a moral force dependent on the consent of the people. Moral force and consent of the people are the two basic elements of the state. In primitive societies the authority of the father or the chief rested on force, but that force was not independent of consent, and 'it consisted of a custom and tradition which bound the chief no less than it bound his subjects.' The alien conquerer of the middle ages maintained their throne by force of arms, but they never ventured to change the customs of the conquered land. The modern governments are carried by the consent of the agreeing majority, and sovereignty of the state rests on the moral sanction of the governed.

'*War is a biological necessity*'.—General Von Bernhardi preached this doctrine in Germany before the Great War on the basis of this theory. According to him, and the Prussian writer Treitschke who defines state as 'the public power of offence and defence,' war is necessary for the existence and development of the state.

The doctrine is fallacious, as a theory of brute force cannot be the permanent basis of state. A brute force however organised it might be, cannot cope with an organised

moral force Might may be the supreme right but it lasts so long as the might lasts The last great war has shown how the combined moral force of the world power fought against the brute force of Germany and compel'ed her to purchase an ignominous peace

The Divine Theory This theory belonged to the period of the 16th and 17th century According to one view the state was the direct revelation upon earth of the Divine government This view was at the root of the Jewish theocracy Another view is that the state is founded by God, but governed indirectly by Him through human agency This was the Roman and Greek idea of the state at that time The greatest champion of this theory is Sir Robert Filmer In his 'Patriarcha', he maintains that the first monarch was Adam who received from God lordship over the whole world This lordship subsequently descended from him to the Patriarchs, and similarly to the modern kings The state is thus a Divine creation The monarch represents a direct Divine agency against whom there could be no valid right Thus he justified absolutism of the king but he differed from Hobbes in supposing absolutism as based on contract This was the position maintained by the Stuart Kings in England, and they based their sovereign power on Divine rights.

Value and Use —(i) This theory served as a ground work for political sanction in a state, when obedience and discipline were badly needed (ii) It served as a useful check against anarchy (iii) It gives a high moral status to the state

Criticism —(i) The theory itself is fallacious and unhistorical Monarchy is not the universal primitive from of government, and the history of the world shows that there were other forms of government besides monarchy, for instance, the republican, oligarchical etc

(ii) The authority of the state is determined by human conditions and changing circumstances "The state is a human institution, its laws are created by men and enforced by them".

(iii) The theory is mainly designed to bolster up the claims of a ruler by identifying him with God, or by considering him as the personal representative of God

(iv) It makes the ruler absolute and irresponsible to the ruled.

(v) It makes no distinction between moral (divine) laws and legal laws, and the obligation arising out of one might be contradictory to the other.

(vi) With the growth of democratic ideas, the Divine right theory was gradually displaced by the Social Contract theory.

The Social Contract Theory. This theory ascribes the origin of the state to a voluntary agreement of the members of a community by which they organise themselves into a political society.

1. *Nature of the theory*.—There are three essential elements is this theory :—

(i) *'The state of nature'* and *'law of nature'*. This theory conceives an hypothetical status of man when he is not subject to any law made by his fellowmen, but only to regulations of general principles inherent in nature itself. Under this natural law every one possessed natural rights. As Green has observed, it is "a state in which every individual is free to do as he likes, and from which individuals escape by contracting themselves out"

(ii) *The social compact*—It refers to an agreement among the members of a community, still in the state of nature, by which a civil or political society is established. The parties to the contract are the individuals themselves, and they agree to give their natural rights in return for common protection. It explains how the state comes into existence by a voluntary contract.

(iii) *The governmental compact*—As soon as the people form themselves into a body politic, their next step is to organise themselves for mutual protection. Thus a further contract is made between people of a community already politically organized on the one hand, and a particular ruler on the other, by which government is created, and authority placed in his hands. This compact justifies the existence of government, and explains the ultimate basis of political power in a state.

The theory therefore presupposes the existence of 'natural

law' and 'natural rights' Circumstances force the people to a compact by which they give up their natural rights for mutual protection, and a political society or state is established A government is next created which secures protection and affords relief This is the sum and substance of the Social Contract Theory, and it is essentially individualistic in principle

2 *History of the Theory*—The idea of 'natural law' first found place in Greek Philosophy Previously all law had divine sanction Under Stoic philosophy the law as divine came to be interpreted as rational or universal law of nature to which all other laws were subservient and tended to conform The Romans incorporated the doctrine of natural law into their jurisprudence After Renaissance this idea served as the basis of social contract theory (For fuller exposition of 'natural law' and 'natural rights' see "Individual Liberty")

The idea that the state authority is based on a compact was prevalent among the ancient Hebrews This idea was further developed by the Greeks, and found clear expression in the writings of Plato The Roman Jurists universally accepted the idea when they maintained that "the will of the Prince has the force of law, since the people have transferred to him all their right and power" Though middle ages were essentially unpolitical, yet Acquinas taught that the authority of the Emperor rested on the consent of the people It also formed the basis of the whole system of Feudalism. When Bodin brought forth the first systematic treatment of the absolute nature of sovereignty, a class of writers called as 'Monarchomas' became enthusiasts in preaching the contractual origin of government, the fiduciary character of all political authority, and consequent right of the people to resist and destroy the existing ruler whenever found guilty of a breach of trust Soon after, this theory was incorporated in the writings of Hugo Grotius The theory has been systematically developed by Hobbes and Locke in England, and by Rousseau in France. Later on, Kant partly accepted Rousseau's contract in which 'private wills' were united under the 'general will' He however differed from him in accepting the real existence of such an agreement Burke's opinion with regard to this theory is not consistently expressed He denounced Hobbes's ideas as monstrous, and again seemed to have worshipped the author of 'Leviathan' With the advent of

Bentham's formula of 'greatest happiness of the greatest number', and Darwin's theory of evolution, the Contract Theory vanishes from the vision of political writers. As Sir Frederick Pollock ridiculously observes, "the formula of the greatest happiness is made a hook to put in the nostrils of Leviathan, that he may be tamed and harnessed to the chariot of utility."

THEORY OF HOBBES

As to state of nature. Man according to Hobbes is altogether a selfish and self-seeking animal. The ultimate motive of all his actions is his wish to satisfy his own appetites and desires. The state of nature, therefore, was a state of war where individual tried to secure his own interest, and there was a constant fear of death. In such a state of nature there was no law, and consequently no such things as justice or injustice, right or wrong. Might alone determined the right, and the weak succumbed to the strong.

As to contract: To escape from the condition of life prevalent in state of nature, men agreed to submit themselves to a common sovereign authority. The contract was made among the members of the community by which they surrendered their natural rights to the sovereign, who became an absolute authority in the state, because the people reserved no right to themselves. As the sovereign was not a party to the contract, neither could he break it, nor could he be deprived of the authority voluntarily bestowed upon him. Thus the people have no rights against the king even if he ruled arbitrarily. In this way Hobbes tried to defend the absolute monarchy of the Stuart Kings of England.

Criticism:—(i) Hobbes's theory emphasises the nature of legal sovereignty of the state, and it does not recognise the existence or power of political sovereignty.

(ii) Its chief defect lies in its failure to distinguish between state and government. The will of the state cannot be identical with the will of an individual ruler.

Attributes of the Sovereign according to Hobbes. (see Chapter, 'Sovereignty.')

THEORY OF LOCKE

As to state of nature —According to Locke the state of nature is not of warfare but one of equality and freedom It is governed by a natural law which enjoins that 'no one ought to harm another in life, health liberty or possessions' Every one has a right which he can use without depriving similar right to others According to Locke, might is limited by the natural rights of others

But there are various inconveniences in such a state of nature In the first place, there is no force which can punish man for violation of natural law Secondly, there is no authority to protect the natural rights of the individuals Lastly, there is no final arbiter to interpret the law of nature, and settle all disputes in accordance with that law

As to contract In absence of a sovereign power men are led to abandon the freedom of the state of nature, and submit to the restraint of a common authority In the contract which they make, the monarch to whom they agree to submit is himself a party, and is therefore bound by the terms of it. The individuals surrender only so much of their rights as is actually necessary for the benefit of the society, and reserve the remaining right to themselves The monarch agrees to protect these remaining rights of the subjects in consideration of the fact that they have given up to him the other rights If the king transgresses upon those rights, the contract is broken, and the subjects no longer owe him an allegiance , so that they may in the exercise of their sovereign power proceed to set up a new government, either by deposing him or by general revolution Locke in this sense justified the revolution of 1688 in England This theory was made the basis of a system of limited or constitutional monarchy

Criticism —(i) According to Locke the King's power can be limited by the sovereign power of the people He therefore indirectly assumes that behind the seat of government there is a sovereign authority of the state In this way a distinction has been shown between state and government

(ii) Locke recognises the force of political sovereignty,

and gives a subordinate place to the conception of legal sovereignty.

Attributes of sovereign according to Locke. (See Chapter, 'Sovereignty.')

THEORY OF ROUSSEAU

As to state of nature : For him the state of nature was of ideal happiness. The society was an artificial institution, and a bad one, and the best thing that man could do would be to destroy society and government, and return to the state of nature in which he could live his life without being bound by the artificial bonds of human laws "Man is born free", says Rousseau, "but everywhere he is in chains."

As to contract : With the growth of population and advancement of civilization many evils entered into the society, and men could not live in primitive happiness. The difficulties became so great that they had to abandon their original natural liberty, and was compelled to form a social contract by which they agreed to live together in a civil body politic under a common authority for better ordering and preservation.

This common authority remained altogether in the hands of the people assembled in a mass meeting which could express the 'general will,' and this 'general will' was the essence of sovereign power in the state There was only one contract by which the state was created. The government was established by a legislative act of the people, and as such it was not a party to any contract. It was a commissioned agent to carry out the executive orders of the state, and derived its powers from the 'general will'. This theory emphasised popular sovereignty, and supported the French revolution.

Criticism :—(i) Rousseau clearly distinguishes state from government, which is an executive agent of the state.

(ii) The theory renders government very untenable. Apart from the fact, it has not got any legislative function, its executive functions are suspended, and practically it is dissolved when the people assemble together in a sovereign body.

(iii) It destroys the legal nature of sovereignty by making it identical with public opinion and placing the sanction of government at the mercy of the 'general will'

(iv) It emphasises extreme form of popular sovereignty, as the 'general will is not even equivalent to the decision of the majority of the people A representative assembly would not suit Rousseau as it did not voice the feelings of the entire people

(v) There is difficulty in passing valid laws, as perfect unanimity could not be secured on all occasions

(vi) Government by 'referendum' and 'initiative is practically unworkable

Attributes of the Sovereign according to Rousseau—(See Chapter, 'Sovereignty')

Value and Use of the Social Contract Theory—(i) It expresses in a confused and erroneous way the truth, that morality is only possible through the common recognition of a common good, and through the embodiment of this recognition in common institutions (ii) It recognises the principle that ultimate political authority of the state lies to a certain extent in the hands of the people, and thus paves the way for modern democracy (iii) It supports the individualistic principle of political science by raising the individual to importance in the state (iv) As a theory of the origin of the state, it is fallacious but as an idea in expressing certain fundamental relations and reciprocal rights and obligations between rulers and subjects, the theory is valuable

Criticism of the Social Contract Theory —Inspite of the elements of truth, the theory has been unhesitatingly rejected as false in sociology, false in ethics, and false in history The theory has been objected to on the following grounds —

(i) *It is unhistorical* —History does not give us one single instance of a state formed by an agreement between individuals Instance of English emigrants to America is sometimes held as an example of social contract, but they were not people who were previously ignorant of political organisation

(ii) *It is unsociological* —There can be no such man

existing before society as Hobbes supposes. A wild isolated *man is not man at all.* *By nature man is a social* and 'political animal', and he cannot avoid the obligations of his fellowmen.

(iii) *It is absurd*:—The idea of contract involves a highly developed political consciousness. It is impossible for men in a state of nature, as the theory presupposes, to contract *themselves into a civil society. Besides the people* who lived in constant warfare could not be supposed to have respect for contract. A concept of abstract responsibility does not arise until after the state is actually in existence.

(iv) *It is illogical*:—The conception of 'natural laws and rights is itself fallacious. The *term 'liberty' as used by the* advocates of the Theory is a misnomer. There cannot be any liberty without any authority. An unrestricted liberty is no liberty at all; it is another name for license or anarchy. Liberty cannot pre exist a government, and in a state of nature liberty would be impossible. 'Natural rights of one would encroach upon the natural rights of others, thus destroying the liberty of all'.

(v) *It is not rational*:—Proper relationship between the individual and the state cannot be contractual, for in that case *membership of a state would be optional. A man could then live* in a state without being its member. The state, however, is not a partnership concern where any one could take admission by contract. "A man is born a member and becomes entitled to the rights, and subject to the obligation which the state creates." There can be no exchange of obedience for protection as claimed by Locke. Obedience and allegiance do not rest upon consent or covenent, but arises naturally out of the necessities of the society.

(vi) *It is not legal*:—The contract made at a time, when *there was no political organization to enforce such rights,* cannot have any force.

(vii) *It is unnatural*:—'Status', says Sir Henry Maine, precedes 'contract.' Primitive society rested not upon contract but upon status. Contract is an artificial product of civilized society, and it is the goal and not the starting point of a society.

(viii) *It is dangerous*:—For it encourages revolution.

Distinction between Biological Organism and Machine —A biological organism is the structure of the several parts of any animal so as to operate to a certain end The parts of which the organism is composed are themselves capable of performing some perfect act thus the eye is the organ of seeing the ear of hearing , the nose of smelling etc It is a living and therefore organised being, and the special functions of the parts are essencial to the life or well being of the whole

A machine is an artificial contrivance or a piece of workmanship, consisting of several parts, made use of to produce motion, so as to save either time or force It is therefore a construction in which the several parts are united to produce given results If has no life and therefore no independent will

The Organic Theory of the State This theory holds that men by nature are political beings, and they are united with one another from the beginning of human life The union is of the same kind as the union between the several parts of a natural organism The state is nothing but the highest form of organic life The Germans developed this idea in the middle of the 19th century Spencer was a great exponent of this theory and treated the subject elaborately in his 'Principles of Sociology'

By Organic theory of the state is meant that its organization has developed out a process similar to the growth of a natural organism The state is not a natural organism itself as it is a product of human efforts also but it has an organic life It may be called an 'organism,' and by this it is not to be understood that the activities of the state should coincide with the assimilative or reproductive activities of a natural organism, or that the state should react to stimuli in the same way as a living body It is in nature organic in the sense of having certain characteristics in common with those of natural organisms The common characteristics are the following as enunciated by Bluntschli —

(i) "Every organism is a union of soul and body, i e of material elements and vital forces' (ii) The organism as a whole remains in tact, although its several parts might have members who have diverse interest and concerns (iii) "The

organism develops itself from within outwards, and has external growth." In these three respects organic nature has been justified by Bluntschli.

Biological Comparison :—Spencer holds that society is an 'organism' in as much as there is a striking resemblance in origin, structure and functions between the social body and the animal organism, and he gives a number of analogies in support of his theory :—

(i) As the animal body is composed of cells, so the state is composed of several individuals. Political societies are made up of a number of parts which contribute to the life of the whole.

(ii) Society grows exactly like a living body. Both begin in germs and gradually become more complex.

(iii) As in animal kingdom there is a low type of animal which have no real organ, then in course of evolution cluster of cells appear, and finally glandular organ is developed, similarly in social structure, first, the primitive man works for his personal gain, then a family working for the household and lastly, the society is developed into a factory type.

(iv) As in the natural organism the parts are inter related, the hand depending on the arm, and the arm on the trunk, so in social organisation the units are inter dependent on one another. In each case, there is a mutual dependence of parts, otherwise a healthy development is not possible.

(v) As particular cells of an organic body may be destroyed with no risk of its life, so individuals in society die with no break in its continuity.

(vi) As the natural organism develops in its environments, so the state develops in its changing conditions.

(vii) As the human organism has a central will, so the state has a common will which influences the action of all the individual members of it. "It is the highest form of organised life,—a sort of magnified person."

Criticism :—The biological analogy is harmless and scientifically unobjectionable up to a certain extent but in many points the resemblance falls to the ground :—

(i) The main mistake of the up-holders of this theory is that they make analogy a ground of proof. In tracing

analogy between a natural organism and society, Spencer seemed to have identified one with the other

(ii) Spencer himself noticed some points of difference A natural organism he says, is *concrete*, that is, its parts are bound together in close contact while society is *discrete* its units are separated from one another But he argues still that the society is a coherent whole, and therefore his comparison is not much affected

(iii) The most striking difference according to Spencer himself is, that in an animal body consciousness is concentrated in a definite part of the body, but in social organism it is diffused throughout the whole He therefore urged that society should exist for the benefit of its members, and not its member for the good of the society, and thus preached an individualistic doctrine, quite inconsistent with his own Organic Theory of the state

(iv) The analogy of state to an organism is also far fetched The cells have no independent life of their own but are completely dependent upon the organism If they are severed, they cease to be a living body , but in a state individuals are independent beings, and even separated, they are still individuals and can live apart from the state

(v) 'The resemblance is superficial The cells of the social organism are mechanical pieces of matter having no volitional activities, while the individuals composing a state are intellectual and moral beings each having a will of its own, and possessing the powers of foresight, movement and self control' The state can control the external actions of individual, but cannot control their motives or thought

(vi) An organism grows and develops from within by internal adaptation, while the state is influenced by the conscious efforts of its members The adherents of the Organic Theory try to explain the origin of the state by saying that governments are not made but grow, but the statement is misleading and in fact the Organic Theory does not explain the origin, nature and purpose of the state

(vii) All natural organisms owe their lives to a pre-existing organism, but the state cannot be derived from any other political organisation It has evolved out of political

consciousness of the people, and is not dependent upon any external influence.

Merit of the Organic Theory :—(i) This theory justifies the structure, growth and evolution of state in a striking resemblance with natural organism. (ii) It has also been used to support many state functions ranging from individualism to socialism, and is a violent reaction against the extreme individualism of the Social Contract Theory. (iii) Lastly it defines relation of individual to the state in conformity with the analogy of the component parts of a natural organism.

Relation of state to individual according to the Organic Theory :—See Chapter IX.

'Governments are not made but grow' —The statement that while the constitution of man is the work of nature, that of the state is the work of art, is as misleading as the statement that governments are not made but grow.

There is one class of political writers who conceive government as strictly a political art. Government, according to this conception, is a problem to be worked out like any other questions of business.

The principle is hardly correct as government cannot be made strictly by the exertion of human will. A nation cannot choose its form of government. It can work out the practical organization of the government, but the ultimate sovereignty of the state, the seat of the supreme power is determined by social circumstances. Besides human power is strictly limited, and political art is subject to the same limitations and conditions as all other arts.

On the other hand, there is another kind of political reasoners, who regard government as a sort of spontaneous product, and the science of government as a branch of natural history. They are not made but grow. It is a sort of organic growth from the nature and life of the people a product of the habits, instincts, and conscious wants and desires.

This theory is also misleading, as political institutions have to be worked out by men whose external circumstances modify and develop them as civilization advances. As Mill

has observed, "Men did not wake up on a summer morning and found them sprung up. Neither do they resemble trees which once planted 'are aye growing, while men are sleeping

It will be seen therefore, that neither of these theories is entirely in the right, yet it being equally true that neither is wholly in the wrong There is a truth at the root of each except that each side greatly exaggerates its own theory out of opposition to the other The English constitution has not been created at one stroke It is the fruit of a gradual development, enriched with products of human will and energy and moulded by movements of public opinion, tastes and habits of the people

The Utilitarian Theory of State The term 'Utilitarianism" is claimed by J S Mill as his own discovery The creed of Utilitarianism is the principle of utility or the greatest happiness as propounded by Bentham 'Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness By happiness is intended pleasure and the absence of pain, by unhappiness pain, and the privation of pleasure" The happiness which is the standard of moral judgment is not the greatest happiness of the individual, but the "greatest happiness of the greatest number

This principle has been developed by Bentham in his "Fragments of Government' Abuses and grievances exist in society, and to abolish them the authority of the state becomes a necessity The basis of the state is explained by its usefulness, and the ideal of greatest good of the greatest number is set before it

Value —It contains an important element of truth in placing before the state an ideal of social utility and individual welfare

Criticism —(i) The conventional views of the utilitarian philosophy does not explain the method by which the state comes into existence

(ii) The formula of the greatest happiness of the greatest number can not be a criterion of just administration It does not define the rights and obligations of the people

(iii) The theory does not explain how the ultimate authority in the state is vested on certain persons

(iv) The idea of happiness cannot be brought into practice by any form of public legislation,

Questions.

1 Enumerate and criticise the various speculative theories as to the origin of the state. (C. U. Hon. 1909)

2. Discuss some of the more important theories concerning the origin of state, and give a brief resume of the arguments which may be urged for or against each of the theories you discuss. (C. U. 1913.)

3. Attempt a reconciliation of the principal theories of the origin of state, *i e*, show what you believe to be the elements of truth in each. (C. U. 1918)

4. Dr. Garner writes, 'we are, therefore, led to the conclusion that the state is neither the handiwork of God nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family.' Answer briefly what you understand by each of these statements, and give a correct conclusion about the genesis of state. (C. U. 1924)

5. "The state is the public power of offence and defence, the first task of which is the making of war and the administration of justice". Criticise this definition of state, with special reference to the Force Theory of the origin of state.

6. "War is a biological necessity."—(General Von Bernhardi). Comment upon the statement.

7. "Government is based upon force." Examine the truth of this theory. (C. U. 1916)

8. "Herbert Spencer speaks of the beneficient working of *the survival of the fittest.*'—How far his doctrine is applicable to modern societies?

9. Write a brief commentary, historical and critical on the Contract Theory of the origin of the state. (C. U. Hon. 1913.)

10. Write an essay on the Social Contract Theory. (C. U. Hon. 1912.)

11. "Just as Hobbes's theory supports absolutism and Locke upholds constitutional government, Rousseau's theory supports popular sovereignty". Elucidate the theory of sovereignty in support of the statement.

12. What is exactly meant by saying that the state is an organism? (C. U. Hon. 1913.)

13. In what essential points does the analogy between the state and the natural organism fail? (C U. 1920.)

14. Explain what you understand by the Organic Theory of the State? What are its limitations? (C. U 1923)

15. Define an 'Organism' Indicate the exact implications of the 'Organic Theory of State' Does it mean that the state resembles an organism in all points?

16 Define an Organism and differentiate it from a Machine Give a brief statement of the Organic Theory of State, explaining in what respects it resembles and in what it differs from an animal organism (C U 1927).

17. Some of the biological comparisons are ingenious and well-stated to many writers they have proved fascinating and seductive, to others they have constituted the basis of an argument for a theory of the state which would sacrifice the individual to society' Amplify and explain the last sentence (C U, 1925)

18. 'The statement that while the constitution of man is the work of the nature, that of the state is the work of art, is as misleading as the statement, that government are not made but grow' Examine and elucidate this proposition (C U 1920.)

19 What is the Utilitarian doctrine and what are its defects (C U 1910)

CHAPTER VI.

EVOLUTION OF THE STATE

There are two rival theories of original form of union of mankind viz (i) the Patriarchal theory of state and (ii) the Matriarchal theory of state

The Patriarchal Theory of State The patriarchal family is held by Sir Henry Maine and other writers to be the origin of human government As Prof Leacock has said, 'first a household, then a patriarchal family, then a tribe of persons of kindred descent, and finally a nation, so runs the social series erected on this basis _ This attempt to refer the institution of government to the authority of an original father

of a family is known as the *Patriarchal Theory.*" The patriarchal family consisted of the father, his wife or wives, his unmarried daughters, his sons with their wives and families together with the slaves and other property. The authority of the father or the eldest living male ascendant of the family was absolute in all respects and was based upon status and not upon contract. This control of the father or patriarch on his descendants has been supposed to be the beginning of a system of organisation amongst the primitive people. We find the justification of this theory in the writings of Aristotle's "Politics". "The family" he says, "arises first; when several families are united and the association aims at something more than the supply of daily needs, then comes into existence the village When several villages are united in a single community, perfect and large enough to be nearly or quite self-sufficing, the state comes into existence."

The Matriarchal Theory of State. The chief exponents of this theory are McLennan and Zenks. According to this theory, people were found living in hordes and 'packs' on which relationship was traced not through the father or any male ascendant of the family, but altogether through females. At that stage, the usual relation between husband and wife did *not* exist. The real unit of the family was *not* the tribe but the 'totem group'. Prof. Zenks has explained the relationship of the individuals very clearly in his 'History of Politics'. "The totem group", he says, "is primarily a body of persons distinguished by the sign of some natural object such as an animal or a tree, who may not intermarry with one another" Marriage was not allowed within one's 'totem,' and the individual who married into another 'totem' had to marry the whole of the women of that 'totem' in his own generation In this form of the society property passed in the female line and the succession was traced through females. Here also primitive society rested not upon contract but upon status. (Status *vs* Contract—see Chapter IX)

Criticism —Modern researches have shown that the Patriarchal and Matriarchal theories cannot be accepted as offering a final solution of the origin of state. It cannot be scientifically established that either one or the other was the universal and necessary beginning of the state. "Here the matrimonial relationship, and there a patriarchal regime", says Prof.

Leacock, is found to have been the rule, either of which may be displaced by the other"

Factors in State building —Whether the Patriarchal family or the Matriarchal relationship was the original form is a question with which Political Science has very little concern All that is required to know is that some form of family life and some tie of kinship had preceded organised political life Generally those people amongst whom politi cal institutions have been most fully developed were organised on the basis of the Patriarchal family and traced their ances try back through males to a common male ancestor Among the ethnic ties the following are the chief factors in state building —

1 *Kinship* — 'All social organisation", says Gettell, had its origin in kinship The original bond of union was based upon blood relationship The father was the head of the family The combined families formed a *gen* or a clan over which a chief kinsman ruled As the clans developed into several clans they were absorbed and drawn together to form a tribe In tribal communities the solidarity of the kinship still remained and formed the bond of union

2 *Religion* —As a factor in state building religion stands closely with kinship 'It was the sign and seal of the common blood, the expression of its oneness, its sanctity, its obligation".

3 *Need for security and law* —When wealth increased and people got into the agricultural stage, the idea of property became developed and regulations concerning things were needed Common defence and military activity became a powerful force in creating the need for political authority and existence of law

4 *Political consciousness* —As society grows under vary ing circumstances, the ties of kinship, religion and mutual protection at first unconsciously develop an idea of common political organisation, and when the end is realised, the idea is crystalised in forming a state by the deliberate act of the general will

The Historical or Evolution Theory —The state is neither a divinely created nor a deliberate work of man It is very difficult to discover the origin of the state The state

emerges out of various sources, under different conditions. It is an institution of natural growth and 'a product of history', where kinship, religion and political consciousness have all helped in its development. As Burgess puts it, "It is the gradual and continuous development of human society, out of a grossly imperfect beginning, through crude but improving forms of manifestation, towards a perfect and universal organisation of mankind." The tribal customs and religious ties create a feeling of unity or general will, and the state is subsequently evolved out of the political consciousness of the people.

"The light of political consciousness did not dawn upon *men in a state of nature all at once, as the Contract Theory* presupposes." As the society grows, there appears a state of common consciousness, when the idea of a political unity first strikes the minds of a few leaders and then it is gradually diffused throughout the mass of population. As soon as the idea is realised by the community in general, it culminates in the creation of government, and thus a state is established.

General features of Political Evolution :—Prof. Leacock gives the following general features of political evolution —

1. There is a progressive increase in the extent of territory and population occupied by a single state, than was the case in primitive state.

2. The authority of the state is gradually becoming fixed, certain and centralised. The rule of primitive government, when spread over a large area, was uncertain and irregular.

3. *Growth of government has been characterised by* political consciousness in the state. The early stages of social union were largely intuitive and unconscious.

4. The development has been marked by a separation that has been effected between the religious and political aspects of society.

5. The modern state has been characterised by the growth of democratic government—the participation of the great mass of the people in political control.

Value of the Theory of Evolution :—The theory incorporates the best elements of all other theories of the state.

The influence of *divine* element is manifested in ties of religion which served to unite the people The elements of force and compulsion are necessary for organising a people into a body politic, and the elements of contract and consent form the basis of all association

Questions

1 Illustrate from recent researches that primitive society appears to rest not upon contract but upon status
(C U Hon 1914)

2 What is Patriarchal Theory of state evolution? Notice and discuss any objections which have been taken to this theory
(C U 1911)

3. What is the modern theory of the evolution of the state?
(C U 1909)

CHAPTER VII.

HISTORICAL DEVELOPMENT OF STATE

The state has not a continuous evolution and it is very difficult to outline its historical development on any uniform basis For practical purposes its growth may be traced through the following heads —

THE ANCIENT AGE

The Tribal State The tribe was the first distinctively political unit It was 'a travelling political organisation" and as Woodrow Wilson has remaked, "a state without territorial boundaries' But when their travelling days were over, they

settled over a definite portion of earth's surface and at length united to form a state.

Political Theory:—Religion was a potent factor amongst the tribal communities. There were two forms of religion in use amongst them—worship of ancestors and of nature. The following characteristics of tribal states have been noted by Gettell :—(i) The tribal state was *personal and not territorial.* The membership of the state included only blood relation. (ii) *It was exclusive,* that is, foreigners were not recognised as members of the state but they could be included within it as slaves. (iii) *It was communal,* as the state was circumscribed round a particular group or community. (iv) *It was uncompetitive* as the regulations of the state were fastened to custom, and the idea of change was repulsive.

The Oriental Empire—the Theocratic State. The Patriarchal chief furnished the powers of the king. He had the religious and judicial powers and an advisory body. As the community widened into still larger body, the reality of kinship was given up The people intermingled with one another, and formed a vast empire with the king as their representative and a centre of force.

Political Theory :—There was no distinction between law and morality. The state was chiefly based on force which had the divine sanction. The age produced hereditary despotic monarchy, and made the priestly class very powerful. Although the Hebrews made some advancement in political thought, for practical purposes, the Oriental Empire did not create any definite political theory. The state was in nature theocratic. (See Monarchy.)

The Greek City State. The Patriarchal clans were found in the early history of the Greeks to have clustered round some hills, where they built their villages. Subsequently their units grew in number and they united under the authority of a king. Custom, religion and kinship were the outstanding factors of these primitive people , but gradually they gave way to more definite law and organisation which formed the basis of the city states.

The internal organisation of the city had undergone series of changes before a definite form of government was established. The king could not retain his power long. All his powers,

religious military and judicial were usurped by the 'Oligarchs who dominated over the states for a considerable time But the oppression of these nobles led to a rise of tyrants who suppressed them with the aid of popular support Thus democracy found its place in the cities and each city developed with its citizens partaking in the share of government

Political Theory of the Greeks —Plato makes an elaborate construction of an ideal state in his 'Republic' He advocates community of wives, children and property Aristotle explodes the communistic idea of Plato, and maintains that the 'state is a natural institution' and 'man is a political animal' His classification of states still remains forcible in political science He advocates and justifies slavery The individuals can have no rights as against the state The life of the individual was completely merged in the state No distinction was observed between state and government or between public and private affairs The size of the state was deliberately kept small, so that all citizens could take part in the government Thus democratic idea prevailed in the city states and it developed civic life and individual liberty

The Roman World Empire The early history of the Romans very closely resembled that of the Greeks. There was at first the patriarchal family organisation, which gradually united under one head and gave birth to the city states Monarchy was developed, which was soon followed by Aristocracy of Pretors and Consuls with an oligarchical assembly of the Plebians Gradually there was a tendency towards democracy by widening the assemblies, but it could not last long for internal feuds and dissentions of the leaders A civil war broke out which marked the end of the republic A successful imperial organisation then followed, which lasted for five centuries in the west, and for fifteen centuries in the east

Political Theory of the Romans —The state was considered to be the highest product of human power. The Romans developed the idea of positive law, and the citizens had legal rights as against the state Their greatest contribution to Politics is the idea of sovereignty and a system of government which secured unity and authority within the state

Greek vs Roman idea of the state: In some of the essential particulars the Romans differed from the Greeks: (i) Law was distinguished from morality and they brought a distinct legal nature of the state. *(ii) The individuals were not completely merged in the state,* as their private rights could not be infringed by acts of the state and thus private property was secured against arbitrary exercise of public authority. (iii) The Romans distinctly conceived the idea of the *people*, and determined the will of the people to be the source of all law. To the Romans, the state was not a *commune* but a *respublica* —a crude form of national state. (iv) Rome developed one side of political activity viz., sovereignty of the state and failed to combine sovereignty with individual liberty. She therefore secured unity at the cost of democracy, in contrast with Greece, which developed democracy without unity. (v) The Roman conception of state was that of an universal domain and territorial expansion as distinguished from the Greek idea of restricting it within the cities.

THE MIDDLE AGE.

The Teutonic State. With the failure of the Roman Empire, the Teutons got the upperhand in political regime. Hitherto they had lived in a crude system of tribal unity. Their whole system was based on the loyalty and personal allegiance to the chief. The tribal villages gradually developed into petty states. The Teutons elected their chiefs in village meetings, and several villages sometimes combined in representative assemblies to discuss matters of war and other foreign relations.

The Feudal State. For a long time the Teutonic and Roman institutions stood side by side. The Teutons kept for themselves their own customs based on a freehold tenure of land and personal allegiance to the chief, and the Romans developed their own principles of law and private rights. Later on a gradual fusion of German customs and Roman Law took place and the result was the development of Feudalism in the middle ages.

Feudalism. It was based on the application of the two processes of (i) beneficium and (ii) commendation. The Teutonic leaders conquered the Romans and took possession

of their lands. The greater barons who secured large amount of territories made gifts-*benefices*, out of them to their immediate followers, and these beneficiaries in their turn allocated portion of their lands to other sub-tenants, each of them being bound by allegiance to his superior landlord for military service The lesser barons were sometimes driven to *commend* themselves to the protection of powerful barons in exchange of military service The king was the centre and titular head of the hierarchy Feudalism may, therefore, be described in the words of Fielden, as "An organisation based on land tenure in which all men from the highest to the lowest are bound together by reciprocal duties of service and defence"

Difference between the Continental System and English Feudalism On the continent a man could side with his immediate overlord against the king He thereby did not forfeit his property In England the King could summon any man to military service, and the vassals were bound to carry out his orders on pain of forfeiture William I of England kept a register of properties of his vassals, known in history as the Domesday book to enforce obligation of his subjects in times of necessity.

Political Theory of the Middle Age The mediæval writers did not develop any theory of state Bryce characterises *the middle age as 'essentially unpolitical'* The Teutons were not at all a political people Their organisation of state, customs and institutions were personal and extremely individualistic

They did not recognise any absolute power in the state and consequently there was no central authority within the state As the entire system of organisation was based upon land tenure and personal allegiance to the chiefs concerned, the state disintegrated into several semi independent parts with a result that the authority of the king was weakened

Sovereignty was identified with ownership of a territory, and this territorial severeignty was considered as the hereditary property of a family Thus there was a divided sovereignty within the state

There was no uniform law within the state. Law was based upon personal independence and liberty rather than on legislative enactment Private law was mixed with public law, and the combination of both produced the new feudal law.

"Neither unity nor liberty was possible in feudalism and the political development of centuries seemed wasted." As has been observed by Gettell, "decentralisation, doubtful sovereignty, conflicting laws, union of church and estate, and the association of landholding, political power and personal allegiance,—these characterised the politics of the middle ages."

To the credit of the Tentons it may be said that their every organisation was characterised by a crude form of representative government which led Montesquieu to remark that the "*germs of Parliamentary constitution were to be found in the forests of Germany.*"

'Feudalism' has also played its part in infusing a spirit of individual liberty in the people which together with possession of land has formed a 'temporary scaffolding of order on which a true national life could grow.'

Two unifying influences counteracting the disintegrating tendencies of the Feudal System :—(i) The Roman Catholic Church and (ii) the Holy Roman Empire.

The Roman Catholic Church : The church retained the internal unity of the middle age The spiritual sovereignty of the church extended to all baronies and states, and 'her lesson of brotherhood and common subjection maintained ideal unity.' Her laws were uniform and reached the people irrespective of class or estates, through the baronial and ecclesiastical' courts, and 'whatever tended to unify land tended to unify politics' Thus the church retarded the disintegrating influence of the feudal system.

The Holy Roman Empire: The dominions of the Franks fell to pieces. It was Charles the Great who reunited them, and built his empire by extending his sway over other wide territories Thus the Roman Empire was restored, and the Pope crowned him as emperor of the 'Holy Roman Empire' It was called 'Holy' because created by the authority of the Church. Charles promulgated the Roman law in his empire and hastened a civil liberty amongst the people. Thus with the help of Roman law he could restore the disintegrating influences of the feudal system.

Roman v. Teutonic idea of State :—(i) To the Romans allegiance to the state was the distinguishing factor. The

individual was practically merged into the state To the Teutons personal allegiance was the chief characteristic of the polity The individuals had no relation with the state (ii) Roman law was the command of the sovereign through the officials , Teutonic law was an immemorial custom of popular origin. (iii) Romans developed the conception of 'private law' while the Teutons developed 'public law'.

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THE TRANSITION PERIOD.

Renaissance —Although it did not bring forth any new political organisation, yet it helped to break up the mediæval and prepare the way for the modern state The ancient art and science were again revived and the nature of state was based upon human considerations instead of purely theocratic dogmas The political cult of the age had undergone a change through the writings of many eminent thinkers

Influence of Machiavelli's 'Prince.' Machiavelli in his 'Prince discusses the nature of sovereignty and what the aim of government should be He holds that the aim of the government must be to secure permanence of the state and he points out that the power gained by certain ways must be maintained by corresponding means.

Machiavelli's doctrine is a theory of the preservation of rather than a theory of the state For this preservation of the state he takes no account of morality. 'Religion and morality are instruments in the hands of the ruler , not masters but useful servants and agents' Thus he divorces ethics from politics

THE MODERN AGE.

The National State According to Bluntschli, the modern epoch begins from 1740 The crusades killed several powerful nobles, in England the wars of Roses weakened the rival houses, and similarly in other countries the power of the nobility diminished in strength A strong central government was demanded by the people for they wanted peace and security The natural outcome was the formation of

national states in which men having common bonds of race, religion, language and history grouped together under strong central monarchs. The national states thus formed were at first absolute in nature, but with the growth of intelligence and wealth people demanded political rights and privileges, and their demand became so strong that the monarches could not resist. At last a representative government was created and democratic national states developed in the last century

In modern national states, the ethnic and geographic unities do not necessarily coincide. The national states have extended their territories to distant parts of the world (colonies) and contain several nationalities As has been observed by Gettell, "National state need not include an entire people · only it must embrace a part which is large and strong enough to assert its character and spirit effectively in the state." England, France, Germany and Italy are national states, although they include different nationalities.

Advantages of National State (i) The national state is representative, and, therefore, people participate in the government. (ii) It solves the problem of sovereignty in relation to individual liberty. (iii) It is conscious of its own limitations, and therefore leaves religion and forms of worship in the hands of the church. (iv) It regulates relationship between the central and local governments and (v) it is characterised by absence of jealousy between the several organs of the state.

ANCIENT & MODERN STATE.

1 *Form of Government*:—In ancient states, the public authority was directly exercised by the citizens in popular assemblies. The modern state is representative and the people elect their best representatives to frame laws, to decide and govern.

2. *Character of the State* —The ancient states were either city states (Greece) or a world state (Rome). The modern states are national states.

3. *Individual liberty*:—In ancient state men had rights only as citizens. Private and public law were mixed up in

the state In modern states man has rights as an individual Private law has been separated from the public law, and the state protects the liberty of the people

4 *State and Government* —In ancient states the government was identified with the state In modern states it is distinguished from the state The state is a unit and the government is its external manifestation a machinery or an organ to run the state

5 *Separation of functions* —In the ancient state there was *no* distinction between legislative and administrative functions In the modern state different organs—legislative and judiciary, are entrusted with different functions

6 *International relations* —The ancient state was limited externally by other states The modern states recognise international law as a limit to their dominion

Questions

1 Give a short account of the achievements and failures of the Greeks in Politics (C U 1910)

2. Describe the process whereby the Greek and Roman governments were developed from ancient family states (C U 1911)

3 What do you think were the chief forces binding men together in the city state and in the Roman empire (C U Hon 1917)

4 Contrast the Greek and Roman ideas of the state (C U 1912)

5 Write a short note on the Feudal system and its defects (C U 1909)

6 'Two unifying influences operated more or less potently during the middle ages to counteract the disintegrating tendencies of the Feudal system'—Amplify and explain the proposition (C U 1911)

7 Contrast the Roman polity with the Teutonic

8. Write a short note on the importance of Machiavelli's 'Prince' in Political Philosophy (C U 1915)

9. What do you understand by a 'National State' (C U 1913 Gr A)

10. Trace briefly the history and development of the idea of the state from ancient to modern times.
(C. U. 1914 and Hon. 1917)

11. Point out marked contrasts between the ancient and the modern state. (C. U. 1909, 1914, 1920)

CHAPTER VIII

SOVEREIGNTY.

The term 'Sovereignty' has been used in various senses, and its several meanings should be differentiated in order to understand its true political concept

1. **Titular and Actual Sovereignty** Ordinarily sovereignty designates the position of privilege held by the monarch of the state In modern age, the king is a mere nominal or titular sovereign personifying the power and majesty of the state : the real sovereign lies in other hands

2. **Legal and Political Sovereignty :** The Legal sovereign is the final authority in the state whose commands are laws, and which can issue and enforce these laws. This is the only sovereignty recognised by the law courts, *e.g.* Parliament in England.

The Political sovereign, as stated by Dr. Garner, is that power in the state which, 'although incapable of expressing its will in the form of legal commands, yet is a sufficient power to whose mandates the legal sovereign must obey and whose will ultimately prevails in the state.' The lawyers may not recognise this sovereignty, and the courts may not take notice of it, but the legal sovereign must bow before its will and enact its commands into law. In a modern representative government, the electorate constitutes the political

sovereign, and in a direct democracy, the entire mass of manhood population is involved

There is a close relation between legal and political sovereignty one is an organised body and the other is no doubt vague and indeterminate, but when it is organised it leads to legal sovereignty In fact the legal sovereign is the resultant of the forces comprised in the political sovereign Political sovereign always lies behind the legal sovereign when it is passive, it exerts its influence through the press and the platform, and when active, it exercises its power of franchise In a direct democracy both the elements coincide, but in modern national states the organised legal sovereign is always separate and distinct from the political sovereign The conception of legal and political sovereignty does not involve a recognition of duality of sovereignty, for both are different manifestations of one and the same sovereignty, though working through different channels

Popular Sovereignty The phrase is originated by Rousseau, and means 'power of the masses as contrasted with the power of an individual ruler or of the classes to control the government of the state' It is the logical outcome of the growth of democracy In modern states it implies the power of the people to exercise suffrage rights in electing and choosing the representatives for the law making bodies

The sovereignty of the people without any sort of organisation has no meaning The electorate cannot express 'the general will', and a direct management of the state by initiative and referendum is unworkable As stated by Dr Garner, 'the sovereignty of the people has a meaning and is entitled to legal recognition only when it is the sovereignty of the people organised in their legislative bodies or constituent assemblies" (Read *Criticism* pp 30-31)

3 **De facto and De jure Sovereignty** The practical or *de facto* sovereignty is possessed, according to Lord Bryce, by 'that person or body of persons who can make his or their will prevail whether with the law or against the law' It exists in the sphere of facts, and predominates in times of revolution and war It is the power which receives and can by its strong arm enforce obedience Thus the *de-facto* sovereign may be a tyrant, a usurping king, a military dictator, a self constituted

assembly a priest or a prophet. The chief instances from history are —Cromwell, Napoleon, Convention offering the Crown to William and Mary, Augustus Octavius etc.

Legal or *de-jure* sovereignty resides in a person or a body persons whose expressed will binds the members of the state, and it exists in the sphere of law. It belongs to him who commands obedience as of right. It does not depend, however, on the obedience actually rendered to it, but upon its legal right to exact obedience. It may be disturbed in a state by internal disorganisation resulting in an armed rebellion, but nevertheless it has a legal right to existence, and is lawfully entitled to command and exact obedience. From this point of view, England has *de-jure* sovereignty over her colonies, until they are granted complete independence.

Legal sovereignty and Practical sovereignty are related to one another The sovereign who gets a practical mastery over the situation and begins to rule, gradually turns out to be a legal sovereign through the acquiescence of the people or reorganisation of the state. Practical mastery usually ripens after a certain time into legal authority. Unless the *de facto* and *de-jure* sovereignties coincide, there is a constant danger of 'might' fighting with 'right', and the result would be revolution.

4. **The Internal and External Sovereignty** Internal sovereignty means the supremacy of the state over individuals or groups of individuals within its own territory. Sovereignty, as such, is the source of all rights and enforcer of all obligations within the state. By external sovereignty is conceived the supremacy of the state in relation to other foreign states, and implies freedom from external control The distinction is not sound in as much as both are different aspects of one and the same thing.

Attributes of Sovereignty. Dr. Garner mentions the following attributes of Sovereignty —

1. *Permanence* - The sovereignty is co-existent with state ; that is, if the sovereignty ceases, the state is also ended. Hobbes is not justified in stating that immediate succession of the sovereign (king) is necessary on the death of his predecessor to continue the existence of the state. The

death of the king changes the existing government but it does not affect the sovereignty of the state in the least It is expressed in the constitutional maxim of England—'the king never dies'

2 *All-comprehensiveness* All political powers in the state depend upon its sovereignty The sovereignty is thus exercised exclusively over all persons and things in the territory of the state

3 *Absolutism* The sovereignty of the state is absolute, that is it is legally unlimited It is independent of any higher law giver, internal or external As Maniam has stated, 'there is no other political power capable of limiting the sovereign, else, by hypothesis that limiting power must itself be sovereign'

4 *Inalienability* The state cannot cede away its sovereignty The sovereignty is a constituent element of the state without which it cannot exist Sovereignty cannot, therefore, be alienated from the state This does not mean, however, that a state cannot part with a portion of its territory or that the sovereign power cannot be delegated to one man, to a few, or to a constituent assembly 'Power can be delegated,' says Rousseau 'but not the general will'

5 *Indivisibility* There cannot be two sovereign powers within a state There might be utility of a division of governmental powers, but the sovereignty itself cannot be divided in any manner

The Absolutism of Sovereignty and the Theory of Limitations The sovereignty of the state is not limited that is, from a legal point of view, it is absolute but looked at from the practical side it seems to be limited by the following forces —

1 *Moral and natural rights* Sovereignty is restricted by the existence of moral and natural rights inherent in man

2 *Divine law* The sovereignty is limited by natural law or divine law As Bluntschli says, 'nations are responsible to the eternal judgment of God

3 *Constitutional law* Limitations are imposed on some state by themselves through their constitutional or

fundamental laws. In Rigid constitutions articles of constitution cannot be changed by the ordinary legislature.

4. *International law*: The modern states are also restricted by the rules of international law, but international law is not law in the strict sense of the term, as there is no legal sanction to enforce obedience.

5. *Conventions*: The sovereignty of the state is limited by conventions grown within the state or outside between other states.

6 *Public opinion*: Dicey remarks that the authority of the sovereign is theoretically boundless, but it is curtailed by the *external limit of public opinion to its exercise.*

7. *Social condition*: The sovereign can make whatever law it pleases: but practically the power of the legislature is strictly limited by social and moral feelings of the time. Dicey would call it an *internal limit*, as it arises out of the nature of the sovereign power itself.

These limitations are not legally restrictions on sovereignty of the state. They are self imposed restrictions on the exercise of sovereign power arising out of legal consciousness of the state As Dr. Garner asserts, 'The law of nature, the principles of morality, the laws of God, the dictates of humanity and reason, the law of nations, the fear of public opinion, and all other alleged restrictions on sovereignty have no legal effect except in so far as the state chooses to recognise them and give them force and validity'.

Federalism and the Theory of Dual Sovereignty. The sovereignty is indivisible, that is, sovereignty cannot be partitioned among the component parts of state. But the organisation of federal state, confederations and real unions represent a division of sovereignty in the individual states. The English historian Freeman, the French scholars De Tocqueville and Duguit, and many German publicists such as Bluntschli, Jellinek, Schulze and others support this dual theory of sovereignty.

The idea of dual sovereignty arises from a failure to distinguish between state and government The state is a unit, and it is incapable of division; but the government, which is

needed. (ii) Such organs are nothing but parts of the government with some special functions. (iii) In the United States of America, hitherto all amendments have been proposed by the congress and ratified by the state legislatures. Therefore neither the people of the United States, nor the people of the states have exercised any power of sovereignty. (iv) The complex body of constitution-making power in the United States cannot be sovereign, as it is itself circumscribed by legal rules as regards its structure and procedure. (The 5th article of Constitution)

(*b*) *Sovereignty as Law-making Power* :—The sovereignty lies in the sum—total of all law-making bodies in the state, which can legally and constitutionally enforce the state's will in all its spheres. The law-making bodies generally include the legislature, executive officials, conventions and the electorate.

According to Gettell this is the satisfactory solution of the problem of the location of sovereignty, as it includes both the popular element and the legal concept of sovereignty. Prof. Gilchrist criticises this theory on the ground that the law-making bodies are themselves parts of government of the state, and they express this will only because of the sovereignty of the state.'

Development of the Theory of Sovereignty.

Bodin :—The first systematic discussion of the nature of sovereignty was made in France by Jean Bodin. He defines sovereignty as, "the supreme power over citizens and subjects, unrestrained by law." This supreme power, according to him, is absolute, unlimited and indivisible.

Althusias —Against the theory of Bodin stood the school of political writers, characterised by their opponents as the 'Monarchomas', whose chief exponent was Althusias. The salient features of this school are the original and inalienable sovereignty of the people, its contractual obligation of government and the fiduciary character of all political authority.

Hugo Grotius —Between the absolutism of Bodin and democratic doctrine of the Monarchomas, comes the compromising doctrine of Hugo Grotius. He defines sovereignty as "the supreme political power vested in him, whose acts are not

subject to any other and whose will cannot be over ridden The most important element lies in his declaration, that sovereignty may reside in a general subject or in a special subject One may say, consequently that the state as a whole is sovereign or that the special organ the government is sovereign He thus comes close to the idea of state sovereignty, although the theory was not fully developed in him According to him all states are subject to the law of nature and they have equal rights and obligations In this way the concept of International law has been developed

Hobbes —Hobbes ascribes the following attributes to the sovereign —(i) He is an absolute authority in the state (ii) His powers cannot be forfeited, as he has not been a party to the covenant and therefore cannot break the same (iii) The sovereign can do no wrong and he is irresponsible and unpunishable (iv) His rights are inalienable and are based upon a voluntary but irrevocable contract The sovereign may delegate his powers but cannot abandon them (v) The sovereign king is immediately succeeded by another on his death to continue the existence of the state (Fallacious idea—making state and government identical) (vi) He has law making and judicial powers and can declare war or make peace He is the sole judge of what is necessary for the security of the state Hobbes, therefore, supports absolute monarchy (*Criticism* see p 28)

Locke —According to Locke, the king stands in the lowest series of sovereignty He is supreme while within the limits of law, and his power is therefore limited If he himself violates the laws the people may set up another King either by deposition or by revolution Next comes in order, the legislative body, the sovereign of the governmental powers as representing the will of the people, and so far absolute Lastly there is an ultimate and true sovereign of the state, and this is the civil or political society itself, which has created the legislature Locke, therefore advocated limited or constitutional monarchy (*Criticism* see pp 29-30)

Rousseau —In the writings of Rousseau, sovereignty arises from the voluntary agreement of independent wills In the original contract each surrenders all to all, and the product of the process is the body politic, which when passive is called the state, when active, is termed the sovereign The private

wills are thus united under a *general* or *public will*, and this general will is the soul and spirit of the sovereign power. (i) The first characteristic quality of the 'general will' is its inalienability. "Power," says Roussean, "may be transferred but not will." (ii) Indivisibility is another characteristic of the sovereign power. The will, it is held, is one and not at all divisible. (iii) In addition, the sovereign will is declared infallible It is always right and always tends towards the general welfare and happiness. (iv) Finally, the sovereign will is absolute. The sovereign has unlimited control over all that affects the general power. The idea of popular sovereignty is thus started by Rousseau. (*Criticism* see pp 30-31).

Kant.—The consent may be a necessary basis of an ideal state, but emperically it is not indispensable The sovereign 'general will' may arise out of the hypothetical contract, but it has no reality unless vested in a physical person or persons. Kant, therefore, criticises the abstract nature of Rousseau's sovereign 'general-will', and according to him sovereignty may be located in Aristotlian democracy.

Cousin After 1830 appeared the theory of the sovereignty of the 'general reason' in place of 'general-will', which had been in early days so much empasised by Roussean. "Will," says Cousin, "in and by itself stands for nothing, it has not the force of a principle." In 'will,' Rousseau forgets 'ought.' As Bluntschli has remarked, "the will is an expression of human spirit, but not like sovereignty a legal institution in the state." The only principle that can create right and ultimate sovereignty is the 'reason', and there are certain principles of reason to be found among men, and these are examplified in constitutional government. Later on, a more democratic idea was given expression in the development of the sovereignty of the nation, regarded in a broader sense, as the general body of citizens.

Contemporary with this movement in France, was the important development in Germany from the idea of the sovereignty of the people to that of the state. Sovereignty was finally attributed to the state viewed in its organic personal character. The other organs of the state were subordinated to it. The monarch is a nominal sovereign as he is

merely an organ, of course, the highest organ in the state, and he together with other organs make up the organism as a whole — the state

Austin —During this time, the doctrine was scientifically developed in England by Austin He based his views largely on the teachings of Hobbes and Bentham He defines sovereignty thus—*If a determinate human superior not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society, political and independent* Austin's definition has exercised an enormous influence on political thought in England and America, and underlies the present system of Jurisprudence

Austin's Theory of Sovereignty

Nature of Sovereignty —From Austin's definition of sovereignty the following important consequences are inferred —(i) the sovereign is independent, that is, no foreign power can control it (ii) It is orderly, as the bulk of community habitually obey the laws unconditionally (iii) It is legal and absolute, as its commands are laws, and there is no legal limit on the power of the sovereign to enforce its laws (iv) It is indivisible, as there cannot be any other sovereign power within the state (v) It is a determinate human superior consisting of persons or bodies of persons, and not the 'general will' as Rousseau preached, or the will of God and the like (vi) It is powerful having sufficient force to compel obligation

Criticism of Austin's theory—(a) It takes no account of the customary laws known as common laws Sir Henry Maine objects on the ground, that Austin's theory does not apply to all states In many eastern states the priestly rules, superstition and customary usages govern the society Even in England common law is based on traditions and customs of the people

Austin anticipated this objection, and made use of a legal fiction to include customary law in his definition "What the sovereign permits he commands", and hence customary rules are transformed into legal rules as they are sanctioned by the

sovereign. But this is a misleading statement. The sovereign allows customary laws, because it is beyond his power to interfere

(*b*) *Rules of equity and other modes of conducting* legal business are left unexplained. In deciding facts that are unusual and unreasonable, judges and juries go outside the province of law, and frequently resort to a standard of judgment based on equity and good conscience which are as much binding as any other law. But according to Austin's construction *of law, the rules of conduct cannot have a binding force.*

(*c*) It does not define the ultimate source of political authority In fact sovereignty in the sense of Austin is a mere legal conception, and means simply 'the power of law-making unrestricted by any legal limit', and it is distinct from political sovereignty, which is a power lying behind the legal sovereignty.

Austin did not at first admit this distinction, but in speaking of the English constitution, subsequently qualified his statement by saying, that "during Parliament the sovereignty is possessed by the King, the Peers with the members of the Common's House, and when it is dissolved, the delegated share in the sovereignty reverts to the delegating body". This would make the Parliament a "trustee" for the electors, which is an absurd idea.

(*d*) Sovereignty is made absolute and unlimited. Austin's conception of sovereignty applies well in flexible *constitutions. In England the Parliament is omnipotent.* It is, however, very difficult to locate sovereignty in the Austenian sense (legal sovereignty) in rigid and written constitutions, such as those of the United States and other states.

Value of Austin's Theory .—(i) He has established the distinction between 'positive law' and morality. (ii) The so-called 'natural law' has now been abandoned, and the sovereignty is viewed as an absolute internal authority and complete external independence. (iii) The legal nature of sovereignty is a clear and logical concept of sovereignty and as Dr. Garner remarks, "much of the criticism directed against it has been founded on misapprehension and misconception".

Political Obedience By political obedience is meant the readiness of the subjects to obey the laws and mandates of the sovereign power This mentality in the subjects is the outcome of several factors The important grounds of obedience according to Lord Bryce are the following — (i) Indolence, (ii) Deference, (iii) Sympathy, (iv) Fear and (v) Reason

Indolence —It is a passive disposition of men to shirk duties and responsibilities To the vast majority of mankind exertion in thought and action is troublesome

Deference —It is an emotion which leads one to comply with the will of the other It may be due to feelings of love, reverence, esteem and superstition or any other power of attraction (Ancient kings and Hindu sages)

Sympathy —It is an "associating tendency" in mankind, 'a disposition to join in doing what one sees others doing, or in feeling what others feel"

Fear and Reason —These are concomitant factors of obedience Hobbes's theory of state based on force, Bentham's theory of 'the survival of the fittest', Kant's doctrine of 'several will', and Cousin's dictum of 'practical reason' have clearly explained how force and reason go a great way in making people subservient to sovereign will of the state

In primitive societies the first three forces played the upperhand Religion is also an associative tendency of immense strength, but the element in religion which makes men obey is fear. In modern times fear of violating the laws, and consequent dread of penalties, together with the national inclination to uphold the sovereignty of the state constitute the habitual obedience rendered to the state

Revolution. Revolution has been defined by Gettell, "as a relocation of sovereignty' When it is unsuccessful, the attempt is called Rebellion. Revolutions can be external and internal

External Revolution consists in the cessation of sovereignty of the parent state over its component parts, and consequent establishment of separate independent states, *e g*, the cessation of the United States of America from England. It also consists in the merging of sovereignty of petty independent

states into a strong federated sovereignty, *e.g.*, the old German Empire

Internal Revolution takes place when the sovereignty is readjusted within a state This may be due to (i) anarchist movements directed to change the existing structure of government without any future policy, (ii) constitutional changes in the form of government, and (iii) governmental measures aiming to change the personality of the government.

Moral right of Revolution :—According to Kant, obedience must be rendered to the state and the people can have no legal right of revolution, as this would be opposed to the very conception of 'public law'.

According to Locke, the people have a right to revolt against the King, if he himself violates the laws. The ultimate end of the state is the protection of life, liberty, property and other rights of the people. Whenever any form of Government becomes destructive to these ends, it is the right of the people to alter or demolish it on the ground that 'necessity knows no law'. Neibuhr, a French writer, has very clearly expressed this idea as he remarked, "When a nation is trodden under foot and cruelly ill-treated without hope of amelioration, like Greece under Turkey, a tyrant without respect for the rights of men or the honour of women, then it is a case of extreme necessity, and no act can be more rightful than revolt against the oppressors. He who denies this right must be a miserable wretch."

Questions.

1. What are the attributes of national sovereignty? (C. U. 1909.)

2. Write an essay on the nature of sovereignty. (C. U Hon. 1913.)

3. Define exactly what you understand by sovereignty How far can sovereignty properly be said to belong to the people? (C. U. 1916.)

4. Analyse the concept of popular sovereignty. State the objections to this doctrine. (C. U. 1921.)

5. How is the doctrine of popular sovereignty applied to a representative democracy. (C. U. 1924)

6 State and discuss the best modern definition of sovereignty and explain the difficulties in the way of arriving at an accurate one (C U 1917)

7 Express concisely and accurately the meaning of the political concept 'sovereignty' (C U 1919, 1927)

8 Expound clearly the doctrine of Popular Sovereignty What are its limitations? (C U 1925)

9 'The question of sovereignty of the state has long been a vexed topic of political discussion, and one that has given rise to the most serious difficulties and misunderstandings' Explain (C U. Hon 1913)

10 Just as Hobbes's theory supports absolutism and Locke upholds constitutional government, Rousseau's theory supports popular sovereignty Elucidate the theory of sovereignty in support of the statement

11. Distinguish between the legal and political sovereignty of the state by special reference to the Government of England (C U 1927)

CHAPTER IX

INDIVIDUAL LIBERTY

Nature of Individual Liberty The term liberty has been used in various senses

1 *Natural Liberty* —Liberty in the abstract sense has been defined by Leiber, as "the faculty of willing and the power of doing what has been willed" That is to say, an individual will be allowed to do whatever he pleases, irrespective of the rights and claims of others Only one man would then poseess absolute liberty, and he would be all powerful, for a liberty of this unrestricted character is hardly possible for every individual at one and the same time

2 *Civil Liberty* —It means protection from undue interference on the part of both individual and the state

Herbert Spencer expresses this idea of civil liberty amongst the citizens themselves when he says, "every man is free to do that which he wills, provided that he infringes not the equal freedom of any other man". The individuals are protected by the sovereignty of the state, from undue interference of their rights by other individuals or association of individuals. This is secured by 'Private law' of the state.

The individuals are further protected by the state as against its own government The officials are equally bound by the 'Public law' of the state so that there may not be undue infringement of the people's rights in the hands of the government Prof. Sidgwick would call this right of the people as their 'constitutional liberty in the widest sense.'

In modern states civil liberty includes the following :— (*a*) freedom of person, (*b*) equality in the eye of law, (*c*) security of private property, (*d*) freedom of speech and (*e*) freedom of conscience

3. *The Political Liberty* —It signifies the right of the people to have a share in the government of the state. By the frequent elections, the initiative, referendum, recall, the system of local self-government and such other institutions individuals are vested with ample power in the management of the state. The political liberty of the people consists in this direct and indirect partaking in the share of the government of the state.

"Political liberty", says Gettell, "is not as widespread or as equally distributed as civil liberty." All citizens enjoy civil liberty, that is, they are protected against the government and against other individuals ; but many citizens such as minor's, lunatics, criminals and women in most of the states are excluded from enjoyment of political rights. (See Chapter, the Electorate.)

4. *National Liberty.*—It is a term practically used in the sense of national independence. It denotes the conception of sovereignty in its external aspect. It also implies the spirit of self determination in the people to choose their own form of government.

Growth of Civil and Political Liberty.—In the ancient states the liberty of the people was non-existent. Plato and Aristotle conceived that the individual lived for the state, and as such, had no personal liberty. This was due to an erroneous

idea of identifying the state with its government. There was no separate existence of the state and, therefore, it could not guarantee liberty to the people against government

In the middle ages liberty was enjoyed by the individual so far as was granted by the rulers Subsequently the Renaissance and Reformation brought a transformation in the minds of the people, and prepared the way for the democratic state Later on, the writings of Hobbes, Locke and Rousseau explained the basic theory of state, and placed its political authority (government) subservient to the will of the people Liberty is to be distinguished from license, and in the sad experience of the French Revolution, the people learnt the evil effects of unrestricted license

In modern democracies, as the existence of the state is separate from that of its government, the civil and political liberty of the people are protected by the state Liberty implies rights and the individuals have now civil, political and constitutional rights

Sovereignty and Individual Liberty—In every state there is a sovereign authority which is supreme over the will of any individual or association of individuals The authority of the state is absolute, indivisible and all comprehensive. How can then sovereignty and individual liberty exist side by side in a state? 'Society alone is despotism and destroys liberty, while liberty alone is anarchy and destroys sovereignty

The apparant contradiction is due to a mistaken belief in the laws of nature, according to which individuals are said to have natural rights of life liberty and property independent of the existence of the state The falsity of the doctrine of 'natural rights', as conceived by the upholders of the social contract theory, has been fully demonstrated by the experience of the French Revolution It has proved that the doctrine is fallacious, barren and impracticable As Gettell has remarked, "in a state of nature liberty would be impossible Each person would have 'rights' only as he could secure them by force 'Natural rights' of one would encroach upon natural rights' of others, thus destroying the liberty of all.' Unless the state defines the sphere of individual autonomy, and limits its boundaries, liberty in the true

sense of the term is not possible. Liberty let loose and unrestricted is another name for anarchy.

The unlimited sovereignty of the state is not antagonistic to individual liberty, but rather its source and support. Its laws are not limitations on personal rights of the individual, but they are the guarantees and safeguards of individual freedom. The two terms sovereignty and liberty are not contradictory, but they are correlative. Individual liberty is a postulate arising out of the very existence of the sovereignty, as there can be no organisation without reciprocal rights and obligations. As Burgess has stated, "deprive the state either wholly or in part of the power to determine the elements and the scope of individual liberty, and the result must be that those individuals who will have the power to help themselves will remain free reducing the rest to personal subjection, or it will lead to anarchy, pure and simple". The liberty of the individual, therefore, is not in 'inverse' ratio to the amount of state regulation, but rather it is proportionate to the amount of law and order prevailing in the state.

The modern principle by which order can be reconciled with liberty is that the individuals should act freely within a certain sphere, and the state would define its elements, limit its scope and protect its enjoyment. From the standpoint of rights and privileges enjoyed by the individuals as against the *government, individual liberty is created by Public law,* and in the protection of the rights and encroachments as against other individuals or association of individuals, it is created by Private law. The state has, therefore, both a positive and a negative function. Its positive function consists in creating an atmosphere of law and order so that political autonomy might develop within the state, and its negative function consists in preventing undue interference with the *liberty* of the *people.* In a *modern state, therefore, the* personal liberty of the people is harmonised with the rules of order and efficiency of the government.

How far the state is justified in interfering with the liberty of the people is a problem, which has given rise to two schools of thought in direct opposition to each other, namely, the Individualistic and Socialistic theories of the state-interference.

necessity to obey the law is called a 'duty'. Besides legal duty, there are (i) moral and (ii) religious duties with which Politics is not directly concerned.

Obligation. Every right corresponds to a duty, but it is not necessary that every duty should have its corresponding right. Where this corresponding right is available against a particular person or persons, the duty is called 'obligation'.

'Right' is, therefore, an "obligation regarded from a different point of view, that is, regarded in relation to the *person to whom the obligation is intended to be useful*". Both right and duty are created directly or indirectly by the sovereign authority. The term 'duty' implies enforcement by the power which creates it, and the term 'right' implies protection from the same source.

Rights against the State. The individuals cannot have rights against the state. The state is the source of all rights, and if individuals will have rights against the very fountain head of all rights, then, practically they have no rights, but powers. Might becomes supreme and conquers all rights. Instead of liberty there is a rule of brute force, chaos and anarchy. The existence of state is, therefore, essential for the *protection of individual rights*.

Right to change the Form of Government: The individuals can have no rights as against the state, but they can have rights against its government. In fact, in modern democracies the right to change the government lies in the hands of the people. It is in this respect that political sovereignty dominates over the legal sovereignty of the state. The legal sovereign must bow before the dictates of the political sovereign. The form of government can be changed at any moment, the political sovereign seriously demands it.

Right to Revolution—See Chapter VIII.

Rights in rem and personem. The term 'rights in rem' implies a right which exists generally against all persons who are members of the same political society. The term 'rights in personem', on the other hand, implies a right which can be asserted against a particular person or a set of persons and no others.

Different kinds of Legal Rights.—Within the state the

term 'right' has been used in various senses, and they can be distinguished under the following heads —

Political Rights —They mean rights of sharing in the government, or in other words the right to exercise the franchise and to vote for a representative in Parliament It signifies political liberty of the people

Constitutional Rights – Rights are constitutional which have to do with the man's relation to the state These are the *fundamental rights* of the individuals, such as, (i) the rights of the freedom of speech and of the press (ii) the right of freedom of assembly, and (iii) free exercise of religion It is one aspect of the civil liberty of the people

Civil Rights —The other aspect of civil liberty corresponds to those rights, which are exercised by the individuals in relation to other private persons They are subdivided by Prof Sidgwick into 'Primary rights' and 'Secondary rights' These rights can be established in a state, if the law is perfectly defined and implicitly obeyed

The primary rights include chiefly (i) the right of personal security, (ii) right to reputation, (iii) right of private property, (iv) right to liberty (v) right to fulfilment of any contract freely and legally entered into

The secondary or remedial rights are the rights (i) to compensation for wilful injury, (ii) to repeal violence by violence etc

Extent of Legal Rights The individuals have legal rights in a state, but these are not absolute The state protects all rights, but also limits their extent, when necessary, for the common welfare and security of the state Political thinkers and writers differ as to the extent and method of government's guaranteeing the legal rights to the citizens (Individualism and Socialism—See Chapter, End of the State) A brief analysis of the nature of different rights and their extent is given below

1 *Right to Life* Every individual has a right to live and defend himself against attack The state, however, awards capital punishment out of human desire for revenge, and for removing the worst enemy of the society for good Suicide is also punishable as every life is valuable in society

2. *Right to Liberty and Personal Freedom.* Every man is free to move and determine the conditions of his life according to his choice. Slavery is universally condemned now as subversive to the spirit of independent will. In England personal freedom means immunity from illegal imprisonment, arrest or coercion on the part of government officials. This right is safeguarded in two ways —(i) Redress for wrongful arrest by way of damages, (ii) the Habeas Corpus Writ, by which the jailor is ordered to produce the accused for trial in court. The personal freedom of the individual, therefore, is secured in England by the rule of law. This right, however is not absolnte. During war, the executive is given arbitrary powers to deal with the emergency.

3. *Right to Property.* Besides homes, clothes and other materials, individuals have rights of private property in land. This right is also not absolute Private property may be confiscated by the state as a punisbment for violation of its laws or for an emergency arising out of war. (For origin of private property, and justification of state-interference in private property, see Chapter, End of the State.)

4. *Right of Contract.* All contracts freely and legally entered into between the parties are maintained and adjusted by the laws of the state The state, however, invalidates all such contracts that are illegal, immoral and risky to its own existence. Slavery has been abolished as immoral.

Status vs. Contract. By 'status' is meant the aggregate rights and duties of men which depended upon the assent of the parties, and as such, they can be changed, modified or ended at the desire of the parties. Thus there is the status of the parents , they take care of their children, and the children are in duty bound to obey their parents, but there is no contract betwen them.

When the rights and obligations, though depending on assent of the parties concerned, nevertheless cannot be changed or altered by them at their pleasure, they form a 'contract' In the primitive societies people lived in 'status,' (patriarchal and matriarchal stages of the society) but with the growth of civilisation, 'status' is passing into 'contract'.

4. *Freedom of Speech.* It does not mean that an individual has right to speak any thing he pleases against his

neighbour, any citizen, or against the government The state restricts such liberty of speech by its laws of libel and slander

5 *Freedom of the Press* One of the fundamental rights of citizens is the freedom of the press In almost all the civilized countries the press is free to ventilate public opinion on all subjects congenial to the welfare of the society Freedom of the press does not mean liberty to print any thing it likes The state prohibits the publication of libellous blasphemous, obscene or seditious articles or books, and the *offender is punishable by the laws of the state The state* allows all fair criticisms of the acts of the government, but guards against possible abuses and malicious criticism

In England, the press is free to print any thing without any previous license, subject, however, to the consequences of the ordinary laws of the land There is no special Press Act in England In France, Press laws form a special department of legislation In India, the press has been subjected to severe restrictions The Press Act is a permanent menace to the liberty of the Indians, and sooner it is removed from the Statute book, the better

6 *Right to Public Meeting* The meeting becomes unlawful, when the object of the meeting is to violate the standing laws of the state

7 *Right of Worship and Conscience* In all civilized countrie complete toleration is allowed to all religious faiths and forms of worship In India the government does not intervene in religious matters but it has stopped all cruel forms of worship The state, therefore, interferes only when forms of worship are immoral, cruel and dangerous

Every individual has free conscience, but individual conscience cannot stand against the laws of the state The state can compel an individual to act according to law even agaisnt his conscience, but it cannot compel him to change his conscience

8 *Right of Association* Individuals have rights to associate themselves in clubs, societies and other organisations for political, social, economic and other philanthropic purposes All these associations thrive under the protection of the state, but sometimes they become so powerful

as to require intervention by the state. The East India Company was a trading association, but had to be transformed into Government of India on grounds of expediency. *Some of the associations of modern times e g*, Trade Unions, Labour Union etc. have become extra territorial or international; and the individual states restrict their sphere of action in conformity with their existing laws All secret political societies in a state are suppressed by the strong hands of the government.

9 *Right to Family.* All family rights, as between father and children, husband and wife, are based on moral and legal grounds The state interferes only when there is a violation of natural relationship. (Laws of minority, marriage and divorce).

Civil Rights in England.—In England, civil rights of the people are protected from undue interference on the part of individual and government, by the 'Rule of Law', by which every citizen of whatever degree is amenable to the same process of law as his neighbour. The Judiciary in England gives relief against all wrong done to curtail the civil liberty of the people.

Burgess's view '—There is no civil liberty in England :—

(i) The judiciary which professes to guarantee civil rights is itself created by the legislative statute, and may be modified or abolished by legislative enactment. The judges are also appointed by the executive, and they remain in the office till their good behaviour. Hence, judiciary in England cannot offer civil liberty to the people, as against the legislature and the executive.

(ii) The constitution of England does not guarantee civil rights in as much there is nothing like 'Declaration of rights,' as known to other democratic constitutions.

*(iii) The civil rights in England are created by the Legis*lature. The Magna Charta, the Petition of Right, the Bill of Rights, the Habeas Corpus Act may be set aside any moment by the Parliament.

Criticism —(i) Although the judiciary in England is subordinated to other organs of the government, yet it is an independent body which fully guards the civil rights of the people. The constitution of England itself is nothing but

judge-made laws By the Act of Settlement of 1701, the judges hold office during good behaviour on fixed salaries, and cannot be dismissed by the executive, except on an address by both the Houses So the judiciary is practically independent of the executive

(ii) Although the constitution of England does not recognise any written 'Declaration of rights' as used by foreign constitutionalists yet the Magna charta the Petition of right, the Bill of rights and the Habeas corpus Act (a writ on the jailor to produce the prisoner for proper trial) are, for practical purposes, worth a hundred constitutional articles guaranteeing civil liberty Mere existence of coostitutional declaration of rights does not guarantee civil liberty without a proper machinery to safeguard it

(iii) The force of public opinion is so strong in the country that no Parliament would dream of repealing statutes protecting civil rights of the people

Civil Rights in America—The constitution of the United States and the constitution of the Part States are embodied in written and printed documents and contain 'Declaration of rights'

The judiciary is a distinct organ in the state, and stands apart from other organs of the government, namely, the executive and the legislature The Federal courts protect individuals from executive and legislative encroachments The Supreme court is the highest court under the constitution and the law

The individuals are fu ther secured under the constitution, as the power of amending the constitution lies in a body quite independent of the government Neither the federal, nor the state legislatures have exclusively the right of amending the constitution (Convention, called by $\frac{2}{3}$ *congress or* $\frac{2}{3}$ *state* legislatures and in either case ratified by $\frac{3}{4}$ state legislatures)

Civil Rights in France—The individuals do not possess much liberty, as their civil rights are not so much safeguarded as in other countries The ordinary judicial courts, no doubt, protect the individuals in respect of their personal rights amongst themselves, but the greatest difficulty arises when the rights of the people are confronted with the rights of the government The existence of Administrative courts for

separate trial of the officials is also a permanent menace to the liberty of the French people.

In France, the judiciary which enforces laws is at the mercy of the Legislature ; and it may abolish the judicial department altogether.

In England, the tenure of the judges is independent of the executive , but in France, the judges can be controlled by the executive. Hence the individuals have practically no remedy against executive encroachments in France.

LAW OF NATURE

Conception of the Law of Nature. The conception of law of nature was first worked out by the Greek Philosophers They were of opinion that the fundamental *principle of uniformity* in nature should be the guiding idea and basis to which all human laws should conform. The general law in conformity with this principle was called by them the 'law of nature'.

The Stoics further developed the idea of the law of nature to mean the *law of reason*. According to them, the guiding principle immanent in the universe is the Divine Reason, and man being a part of this universe should also be guided by reason. Laws should be such rules of conduct as to be amenable to reason and conscience.

The Romans had at first their own conception of law in *jus civile* or civil laws which concerned their own citizens, and *jus gentium* or law common to all nations, which was applied to the foreigners who came to Rome. But when Rome conquered Greece, the influence of Stoic philosophy was at once felt in Roman law. The old *jus gentium* began to be considered as a perfect embodiment of the law of nature. It was a just and *reasonable* law, which appealed to the best side of the human nature. Gradually *jus civile* fell into disrepute, and subsequently yielded to the growing demand of *jus gentium*, which came to be known as the *jus naturale* or the 'law of nature'. The popularity of Roman law had led to its diffusion all throughout Europe, and the influence of the law of nature was thus felt in the judicial bench of each country.

In the mediæval period, law of nature was identified with

the *law of God*, and thus became an ethical standard or ideal Freedom of religion and worship in the modern states owe their conception to this ideal of the law of nature

After Renaissance, the law of nature came to be considered from the standpoint of the *state of nature* It secured as the basis of the Social Contract theory promulgated by Hobbes, Locke and Rousseau According to Locke, the state of nature was of mutual strife and warfare With Locke, the state of nature was a state of perfect freedom which pre existed any form of government Rousseau made it a basis for the declaration of the rights of man as—liberty, equality and fraternity It culminated in the French Revolution, which gave a death blow to the idea of the state of nature

Criticism —(i) The chief defect of this theory of law is its absence of any legal force Natural law, in *so far as it* is a direct revelation of the will of God, is an absolute law and must be obeyed , but the idea of moral sanction does not prescribe any punishment for violence of laws (ii) It makes no distinction between law *as it is*, and law as ought to be (iii) Natural law which subsequently came to be interpreted as a law of reason, can at best be regarded as a standard of justice (Kant) It can only be an ideal to which all human laws should conform But the state is a human institution and, therefore, imperfect consequently natural law cannot be its guiding factor. The law of the state must be a human law and not a natural law (iv) It does not serve any historical explanation of the theory of the origin of the state (Read criticism of Social Contract Theory)

Modern uses of a belief in Natural Law

1 *International law* —The practical effect of a belief in natural law is the development of International law, which was created early in the seventeenth century by the illustrious jurist Hugo Grotius It embodies certain rules which states under certain circumstances *ought* to follow, and they *legitimately* be compelled to follow on the basis that all states are equally sovereign, and that no state should *unnecessarily* and *unreasonably* encroach upon the rights of the other, and violate the dominent principle of the law of nature

2 *Equity* —The doctrine of equity to which judges

often take recourse to in law courts, is based upon moral principle of reason and good conscience, which is the Stoic ideal, and the common sense principle of fair dealing, which is the Roman ideal of the law of nature

3. *Trial by Jury* —The system of trial by jury is the logical outcome of a belief in natural law, in as much as, the concurrent finding of facts by the jurors approaches nearer to truth.

4. *Inalienable rights of man* :—Rights of individual life and rights of private property are surviving traces of the doctrine of natural law in a state.

5 *Philosophical method of study of Political Science* :— The doctrine of natural law has led to a systematic and philosophic study of many theories of political science, *e.g.*, the social contract theory, the theory of natural rights etc.

Influence of Natural Law. (i) *Literature and Arts*: It brought about a romantic movement in literature. Nature became a favourite theme of the poets — Wordsworth, Scott, Shelly and Keats in England. (ii) *Theology* Religion was based on reason and not on direct revelation— natural theology. (iii) *Economics* The Individualistic school based its doctrine of *laissez faire*, let alone policy, on a belief in the law of nature. (iv) *Natural Science* The Physical and Biological sciences were influenced by the law of nature. Herbert Spencer was the great exponent of this school.

Natural Rights. The term 'natural right' is derived from the conception of the law of nature, which indicates a general principle of action founded upon reason and conscience.

Criticism :—In a state of nature liberty is impossible The rights are created by law, and consequently men cannot have natural rights of life, liberty or property Hence the term 'natural right' is itself self-contradictory and meaningless. (Read also pp. 67 68.)

Questions

1. Write a short history of Liberty showing the different senses in which the word can be used. (C. U. Hon. 1917.)

2 Discuss the proposition that sovereignty is not antagonistic to liberty (C U 1919)

3 "The liberty of an individual is not always in inverse ratio to the amount of state regulation Examine and illustrate this proposition (C U 1920, 1923)

4 How can order be reconciled with liberty and rights of the state with those of individuals? (C U 1917 1918)

5 'Law is the condition of Liberty' Amplify the statement

6 Discuss and distinguish the various meanings of the term 'right (C U 1915)

7 Distinguish between 'civil' and 'political rights (C U 1920)

8 How are civil rights guaranteed in (*a*) England, (*b*) America and (*c*) France (C U 1920)

9 Explain what is meant by Natural law' (C U 1917)

10 Is there any such thing as a natural right? If so, what exactly does it signify? (C U 1916)

11 Explain the conception of the Law of Nature and the place assigned to Natural law by Bodin, Hobbes and Grotius in their respective theories of the origin of state Compare and contrast this natural law with Jus gentium of the Roman jurists (C U Hon 1915)

CHAPTER X.

LAW

Concept of 'Law'—The term 'law' has been used in various senses —(a) When applied to the phenomenal world, it is a sequence of cause and effect, and is called natural law As for example, the law of gravitation and other chemical laws (b) It is also applied to the rules regulating human conduct, and used in two spheres of action—(1) If the rules

are concerned with motives and internal acts of the will, they are moral laws, and (ii) if they refer to outward acts, they are either social or political laws. Political Science deals with the latter only, and they are called *Positive law*.

Nature of Law. (i) Law is a command of the sovereign authority, issued to the rest of the members of a political society, and such command is generally obeyed by the people.

(ii) It is applied in relation to state and individuals. When it deals with relation of individuals amongst themselves, it is called 'Private law,' and when it is applied in relation of individuals to the state it is called 'Public law.'

(iii) It is created by sovereign authority. The chief source of law is legislature, which is the authorised public organ of the state. The sovereign will of the state, when expressed by legislature and enforced by means of its government, is called law.

(iv) It is, therefore, enforced by the authority of the state. Law is a body of rules which must be obeyed, and if it is violated, penalties will be inflicted on the offender by the authority of the state. This enforcement is the chief characteristic of law. It has, therefore, been defined by Holland, as a "general rule of external human action enforced by a sovereign political authority", or, in the words of President Wilson, "the will of the state concerning the civic conduct of those under its authority"

Essentials of Law: For the existence of law, therefore, there is needed (a) an organic community capable of exercising a will of its own, (b) a set of rules which have gained stability and permanence either by custom or through enactments, and (c) the authority and power of government to enforce such rules.

Law and Ethics. Laws are rules of external conduct of members of a political society. The rightness and wrongness of external actions must be determined by the state, and this is done by enactment of laws which are based on ethical ideal. Ethics cannot be totally divorced from the state and, in fact, law is "*the index of moral progress*" of a country Whenever any law is unjust or repulsive to the public opinion, it is either amended or repealed altogether. An unjust law cannot

secure permanence, however, strong a sanction may lie behind it

The *distinction between law and ethics* should also be made clear (i) As regards sanction moral rules are enforced by dictates of conscience, whereas laws are enforced by the authority of the state (ii) As regards content ethics is concerned with motive and all internal and external actions of men, whereas law is concerned only with external actions (iii) As regards province ethics is concerned with development of character of an individual, whereas, law marks the development of men's relation to one another in society (iv) As regards nature law allows many things which are morally wrong *e g* falsehood, ingratitude etc, and forbids other things which may not be morally wrong, *e g* rash driving etc

"*There is a common legal conscience in mankind*"—There are some persons who would suffer the cruelest punishment to defend their moral conviction and there are others, who would remain on the side of law at the cost of moral principle There is thus a common moral conscience, and a common legal conscience in mankind It is the aim of political science to combine the two elements

"*Law is both a mirror of conceptions and an active force*"—Law is a body of principles and conceptions prevailing in a community, and is apt to be based on an ethical standard. It is also an active force which constitutes authority in the state As President Wilson has observed, 'it exercises both ethical and a physical compulsion" It involves 'ought' in proportion as it is just and expedient and a 'must', when the moral force fails and a physical compulsion is required

Sources of Law The sources of law may be outlined as follow —

1 *Custom* Customs are suggested by the habits of the people in following certain rules of conduct universally accepted by the members of the society These customary rules influence law, and they are 'preserved, strengthened and given effect to by the practice of the courts' In modern states, the customary rules as observed by courts are known as *Common Law*

2. *Religion* : In the earliest times, custom and religion were almost identical. Religious injunctions have sometimes been embodied into law. The Hindu laws of adoption, succession, payment of legal debts of the father etc. are all based on religious tenets of the Hindus.

3. *Ancient Codes* : The ancient system of law consisted of codes *e.g.*, the Mosaic law, the law of Twelve Table, the laws of Manu, the laws of Solon and the Koran. These codes contained a body of technical religious rules, which were observed and followed in daily practice "The codes formed the basis of future progress of law, and the history of law in subsequent ages was the history of various modes of interpreting the provisions of the codes".

4. *Interpretation and Adjudication* : The two processes help to extend the law. Interpretation is a process by which the existing laws undergo modification and transformation to meet the growing requirements of the community. In expounding and giving scientific application to the laws, judges indirectly mould and expand the law. These 'judge-made' laws become precedents and authorities, which are cited and followed in law courts, and thus by successive interpretations a new law is developed and comes into existence.

5 *Scientific discussion* . The opinions of the great jurists have influenced law to a considerable extent. They rearrange the law, that are based upon custom, judicial decisions and enactments, by filling up the gaps from a new basis of law. The authorities of the Roman Jurisconsults, Blackstone, Coke, Kent etc. are conspicuous examples.

6. *Equity* . It developed early in the history of Roman law through *jus gentium*, subsequently identified as *jus naturale* The most conspicuous types of such law were the decisions of the Roman Prætor in promulgating his 'edicts', and those of the English Lord Chancellor or of other judges of the court of Chancery. Even, at present, judges decide cases in accordance with the doctrine of equity and good conscience, when the common law provides no adequate process. Equity, therefore, is a kind of judge-made law.

7. *Legislation* : The most important and the direct source of law is the expressly declared will of the sovereign authority. The sovereign authority declares its will in the

form of law, and its chief function is legislation Formerly, the magistrates or the priest kings had the right of dictating laws Subsequently, the right devolved upon the assembly of freemen in the Roman empire In the modern democratic states it is the chief function of the representative bodies In earlier days, assemblies were concerned with only public law, but with the growth of representative assemblies both public and private law have been regulated by the legislative authorities of the state

Development of Law The history of development of law in Europe can broadly be traced through *the history of the diffusion of Roman law* throughout the continent. The causes of the diffusion may be enumerated as follow —

1 *The Barbarian Codes* After the dismemberment of Roman empire, the barbarian leaders *viz*, the Goths, the Burgandians, the Franks drew up their respective codes, which contained mostly principles of Roman law, and these furnished the law to Europe until the eleventh and twelfth centuries

2 *Growth of Trade and Commerce* The Italian cities became the great centres of trade and commerce People from all parts of the continent flocked together in those cities, and gradually mixed up in close ties of social, political and commercial union Naturally their personal law was displaced by the Roman law

3 *Influence of the Schools* Roman law began to be studied systematically by competent scholars Flourishing schools of Roman law were started at Bologna (Italy) and Paris, which attracted students from all parts of Europe They, in their turn, disseminated the principles of Roman law to various centres from where they came

4 *Influence of the Church* The church disliked the Teutonic system of communal ownership of land, and hence favoured Roman law which recogoised individual ownership of land

5 *The Latin Language* As a common language for mutual intercourse, it helped the spreading of Roman law in the continent of Europe

England and the influence of Roman Law England was under the sway of the Romans for centuries, and Roman law

was tried to be incorporated into English system, through the influence of the clergies and other ecclesiasts of the church. But the English judges and lawyers persistently kept it outside their own courts. The commons and nobility were also opposed to the introduction of Roman law. Gradually England developed her own legal system on the basis of the Teutonic customs. The Teutonic customs mostly prevail in public law, and in private law, gaps are filled up by equity (Roman influence) and common law (custom).

Basis of Modern Law : The influence of the Roman law existed in Europe up to the 12th century. After the fall of the Roman empire, the Teutonic customs also prevailed in the continent ; and for a long time, there was a relative influence of both Roman and Teutonic systems.

The two systems were completely different. (i) The Teutons placed much importance on the side of political organisation, and their government was more or less of a representative character. (ii) The Romans cultivated unity in the state. In the Roman system, allegiance to the state was the distinguishing factor ; the individual was completely merged into the state. In the Teutonic system, personal allegience was the chief characteristic of the polity The individual had no relation with the state. (iii) The Romans, however, developed private rights, while the Teutoos recognised only communal rights. (See pp. 48-49.)

The Teutons destroyed the Roman conception of public law altogether, but gradually incorporated the Roman idea of private law into their system. Thus there was a fusion of Teutonic customs with Roman law, which produced the modern conception of Law in Europe.

Division of Law. There are various modes of dividing the province of law. From the nature of sovereignty, law has reference to internal and external relations of the state It is therefore, first, divided into two branches viz. Municipal law and International law.

Municipal Law : All laws enforced by a sovereign authority, within the territories limited by the state as determining relation either of state to man or of man to man, are called Municipal laws. Municipal law may be defined, "as comprising those rules of human conduct which are established.

or sanctioned by a state, in virtue of its sovereign authority for the guidance and direction of its citizens or subjects."

International law It is a body of rules that regulate the external relation of the state in its dealings with other states

Municipal law is further divided into (i) Public law and (ii) Private law

Public law It deals with the organisation and functions of the state and with its relation to its citizens Thus in Public law the state is both an interested party and an enforcing authority Its important sub divisions are (a) *Constitutional law*, which defines the organisation of the state and outlines the nature and scope of governmental power (b) *Administrative law*, which details out rules and procedure of exercise of governmental power as laid down by constitutional law, and (c) *Criminal law and procedure*, which sanctions penalties for infringement of laws as against the state

Private law It is concerned with the private individual's as between themselves and secures the rights of each citizen as against other citizens In private law, therefore, the state is simply an enforcing authority Its important sub divisions are the law of contracts, of transfer of property, of torts, of inheritance etc

Besides these, there are other subdivisions of law, such as, statutes, ordinances and common law

Statutes—All laws enacted by the legislative bodies in a state go by the name of statutes *Difference between State law and Constitutional law*,—(See Chapter, Constitution)

Ordinances—They are temporary orders issued by the Government for administrative purposes In India, the Governor General can issue ordinances which have legal effect up to six months

Common law—The body of rules which is enforced by the courts and based upon custom, rather than on legislative enactments, is called 'common law'

Law as Personal and Territorial Law is said to be 'personal,' in the sense that a man takes the law of his parent simply by his descent, and not from the land of his birth or through allegiance to any particular ruler As regards inheritance, succession, marriage etc., the Hindus and Mahomedans

in India are still governed by their personal law. In Europe, up till eleventh and a part of twelfth century, when the Barbarian rulers ru'ed the continent, the people were governed by their 'personal law.' Subsequently with the advent of Feudalism, the law became 'territorial,' that is to say, the tenant took his law from the land and province he lived in. Except some of the personal laws of the Hindus, Mahomedans and other minor sects, the laws of British India have been codified and made territorial.

Questions.

1. Define Law as to bring about clearly the nature of the state, sovereignty and right. (C U 1919 1922).

2. A state consists of the following elements :—(*a*) Constitution, (*b*) Sovereignty, (*c*) Law, (*d*) Government What does each of these terms mean, and how are these elements related to each other ? (C U 1927).

3 What are the sources of law ? Explain its nature in the modern state. (C. U 1909. 1912 1921).

4. Distinguish between Law and Ethics. Illustrate this statement,—"There is a common legal conscience in mankind. (C U. 1912, 1919, 1922).

5 "Law reflects public opinion and thus acts as the index of moral progress" Amplify the statement in the light of relation between Law and Ethics.

6. Give a brief account of the causes which have led to the diffusion of the Roman Law in the legal system of the continent and to its absence in the English system. (C. U. 1909, 1911, 1912, Hon 1914).

7. Explain what is meat by 'Common law and 'International law'. (C U 1917).

8. Distinguish between 'Private law' and 'Public law'. (C U. 1921).

9 Distinguish between 'Statute law' and 'Constitutional law' as conceived in England, France and the United States.

10. Contrast the influence exercised by the Roman law on the judicial systems of England, France and Germany respectively. (C. U. Hon. 1915)

CHAPTER XI

INTERNATIONAL LAW

Concept of International Law The essential element of the state is sovereignty that is to say all states are absolutely supreme over all individuals within the state and absolutely independent of all external influence There cannot be any intermediate authority between two or more states But in actual practice, a state cannot exist having absolutely no concern with other states As Gettell has observed ' common language and literature common culture and science, common ideas of right and wrong and especially the recent remarkable growth of trade and travel —all these create ties of mutual interest and increase the dealings of state with state" All these bonds of union both in times of peace and war require a definite code International law is nothing but a set of these rules, "which determine the conduct of the general body of civilized states in their dealings with one another '

International Law is not properly Law Opinions differ as to the exact *nature of international law* Some writers hold that it is not property law on the following grounds —

(i) *Indefiniteness of its source* The international law has arisen out the conception of natural law which is itself indefinite and vague There is no regular organ of legislature whose product it might be called

(ii) *Absence of sovereign authority* According to Austin, law is a command of determinate sovereign authority, but international law is a body of rules determined by several sovereign authorities on a mutual understanding

(iii) *No legal sanction* As there is no sovereign authority whose command it is so it has no legal sanction to compel enforcement of its rules in cases of violation It cannot effectively determine all rights and duties of independent states under all circumstances

(iv) *Not systematic and consistent.* It is not a set of rules systematically arranged in an international code. The rules of international law are yet in a stage of development. Gettell remarks that "just as custom is a sort of imperfect law so international law is a sort of international public opinion, or customary observance, imperfectly enforced in an imperfectly organised world-state."

(v) *Close resemblance to moral laws* According to Prof. Sidgwick, the province of international law is a province half-way between the province of morals and the province of positive law He has, therefore, defined International law as "a system of rules to which it is generally held that states under ordinary circumstances, not only *ought* to conform, but may legitimately be *compelled* to conform."

International Law as Law. On the other hand, there are other writers who would consider International law as law. According to them the International law may be defined as "the aggregate of the rules determining and giving effect to the rights and duties of independent states." They argue on the following grounds:—

(i) *Sovereign authority not necessary.* Existence of government, according to them, is not essential for enforcing law. Rights and duties can be adjusted without the intervention of any controlling authority The history of primitive societies supports the view Absence of sovereign authority, therefore, does not deprive international law of its character of law.

(ii) *Adequate sanction in the background.* International law has also sanction behind it like all ordinary laws. Threat of war, reprisals and cessation of diplomatic relations are the several means of punishing a state in case of violation of any international law "The greatest and strongest government dread the moral isolation created by general adverse opinion and the unfriendly feeling that attaches it."

(iii) *Settlement of disputes.* Like ordinary courts of law, international courts at Hague, in the present century, have solved many international problems and made many peaceful settlements by arbitration.

(iv) *Conserted action.* The League of Nations has been a potent factor in international relationship of states. It

provides an assembly, a council and a permanent court of justice to deal with all international disputes The League is now in its infancy, and with the adjustment of balance of power its scope will be gradually increased

(v) *Administration* In many cases administrative organs have been established, *e.g.*, offices for the regulation of rivers, for postal, telegraph and railway services

History of International Relations—The development of international law may be traced through three well defined stages —

1 *From the earliest times to the establishment of the Roman Empire*—The conception of international law did not develop either in ancient Greece or Rome In ancient Greece, the maritime codes simply governed the commercial relations with foreigners The city states were self-consistent and had no mutual interdealings The Stoic Philosophers had just then begun to interpret the law of nature into universal reason

In the early history of Rome, international relationship was found in the *jus feciale*, enforced by a semi religious college, that gave advice on questions of war and peace Subsequently Rome developed into a world state and international dealings became out of the question The Romans incorporated *jus gentium* into their legal system, but they did not conceive it as applying to the relation between independent states, an idea which followed in the later rise of international law

2 *From the Roman Empire to the Reformation* The Roman Empire was a world state, and the power of the king was absolute which continued ever after its downfall in the Holy Roman Empire Subsequently Pope became the supreme authority, but he soon fell out with the king, with a result, that Europe was divided into rival camps The Reformation further crushed the power of the Pope and gave rise to national states These national states were all absolute monarchies, and they were very jealous of one another There was not till then any international law binding the several states, but several influences were preparing the way for it —(i) The maritime codes regulated commerce between several states (ii) The feudal system brought the concept of territorial sovereignty which limited the powers of the ruler to his fixed territory. (iii) Doctrines of chris

tianity and chivalry taught humane methods of warfare and emphasised the brotherhood of nations. (iv) The systematic study of Roman law laid the foundation of inter-state relationship. (v) *Jus gentium* came to be regarded as *jus naturale*, the fundamental principles of which pervaded through all nations.

3. *From the Reformation to the present time*: The national states were comparatively equal, and all of them were organised on a teritorial basis The horrors of religious wars were over, and the new situation demanded new rules of peace and war The Dutch Philosopher, Hugo Grotius formulated for the first time the rules of international relationship on the basis of *law of nature* which applied to all nations. His *fundamental doctrines were* :—(i) "All states are equally sovereign and independent" (ii) "The jurisdiction of the state is absolute over its entire area." This is the modern theory of sovereignty of state, and the conception of international law is based upon the recognition of sovereign rights of all the states

The theory of law of nature upon which was based the idea of international law, has now been discredited by the modern writers. The international law has come to rest on *the theory of mutual consent* In the nineteenth century many cases of voluntary arbitration were effected by special tribunals, treaties and conventions. A permanent arbitration court was established at Hague. "The present century has seen the peaceful settlement by arbitration of many international difficulties that in former times would have been submitted to the arbitrament of the sword" The latest development in international law is the League of Nations that has been created after the termination of the last great war.

Sources of International Law—Gettell has enumerated the following sources of International law :—

(i) *Law of nature* Natural law or a code of moral obligations was considered to be binding on all nations. Hugo Grotius based his conception of international law on the theory of the law of nature.

(ii) *Roman law*: The Roman idea of *jus gentium*, which was the law of equality of all nations had considerable influence in developing the idea of international law. The Roman

principle of equality of all citizens conveyed the idea of states as equal and independent

(iii) *The works of great writers* From histories, biographies and writings of great jurists, such as Hugo Grotius, Kent, Lawrence Hall etc, are obtained informations regulating wars, diplomacy and treaties which influenced the growth of international law

(iv) *Treaties and conventions* These lay down terms of agreement arrived at between the states in relations to one another In the past, they dealt with questions of territory—treaties of Westphalia Utrecht and Paris of sovereignty—treaties of Versailles and Paris and of conduct for future guidance of the states—Geneva Convention and Brussels Conference

(v) *International conferences and decisions of arbitration tribunals* The Hague conferences

(vi) *Municipal laws of states* They deal with questions of international law such as, citizenship and naturalization, neutrality, tariff, army and navy regulations etc

(vii) *Diplomatic correspondence and state papers* They are sources of information regarding usages, and ultimately become precedent

Scope of International law—The entire field of international law is practically covered by three fold division as noted below —

1 *Laws of Peace* They determine (*a*) independence of states Intervention is justified by international law only in cases of self preservation enforcement of treaty rights and prevention of illegal intervention by another state, (*b*) equality of status and jurisdiction over territory of the state, (*c*) right to make and enforce laws on all natural born citizens, naturalized subjects resident aliens and alien travellers, (*d*) the practice of sending and receiving diplomatic representatives, such as, ambassadors, envoys, resident ministers and charge's d' affairs

2 *Laws of war* They include (*a*) Retorsion by which restrictions are put on a certain state, (*b*) Reprisal *i e*, seizure of property belonging to the offending state or its citizen, and finally (*c*) war and methods of warfare

3 *Laws of neutrality and neutral commerce*

Parties to International Law.—The parties to international law are primarily *recognised sovereign states* commonly included under the group called the 'family of nations'. The sovereign states consist of (*a*) those states that existed before international law was developed, *viz*, England, France, Spain and others, and (*b*) those new states that have been admitted to the 'family of nations' under certain conditions:—(i) States formerly uncivilized but admitted by common consent or treaty viz, Turkey, Persia, Japan etc. (ii) States formed by civilized men in formerly uncivilized regions viz, South African Republic (iii) States whose independence has been recognised after a successful revolt viz, The United States (iv) States formed by a union of former sovereignties viz., Germany and Italy.

Besides these, International law also deals with *certain temporary bodies* under certain conditions and exceptional circumstances They are (i) non sovereign political organisations *e.g.* Protectorates under the suzerainty of a state —Egypt under the British Empire. Also when a number of sovereign states group together into a Confederation and act as a unit in external affairs, they become party to international law *e.g.*, the German Confederation (1815—1866). (ii) Corporations owning property: They may be governed by their National State, but may have international dealings *e.g.*, the East India Company (iii) Individuals: As owners of property, pirates or blockade runners, individuals may become subjects of international law.

The League of Nations—International relation between states exists from a long time, and in numerous ways states have been united by treaties not only for the purpose of their military offence and defence, but also for the regulation of common political and economic interests. The last great war has, however, raised many serious problems of international law. Since the termination of the war, the questions of disarmament, economic deadlock and violation of treaties have been vexing the minds of the statesmen. The existing international organisation was not sufficiently powerful to cope with the situation. The League of Nations has, therefore, been established, and attempts are being made to bind all states in a common understanding of mutual benefit.

and international law will have full scope in determining the rights and duties of the individual states. As yet, one of the most powerful states *viz*, the United States of America has not joined the League on the ground of British Empire having greater representation on the League than any other state. Hitherto the League seemed to have been powerless in dealing with aggressive policy of Italy towards Greece, and very recently, that of England towards China. How far it would be successful to prevent future wars is very difficult to foretell. But as some writer has remarked, "a genuine world state or a state embracing the civilized nations of the world will ever be established, does not seem possible".

The Universal State—Many Political thinkers have begun to conceive the idea of a Universal State. Prof. Gilchrist has given various grounds favouring the idea of a universal state, *viz*—

Philosophical: Aristotle long ago declared that 'man is a political animal'. It is a common characteristic of mankind to combine and hold together in bonds of fellowship and organisation. This impulse has led to the formation of the modern states, and from this to a larger organisation of a universal state is a next step.

2. *Historical*—Several attempts have been made in the history of the world to realise this end:—(*a*) Alexander the Great tried to combine the east and the west, but his project came to an end with his death. (*b*) The Romans tried to found a Universal Empire, which was wrecked by the Teutons and the Germans. (*c*) The Holy Roman Empire was the next step, but it was crushed by the new spirit of Reformation. (*d*) Lastly, Napoleon Bonaparte tried to form a world empire, but he failed because of the resistance of the English. Till then the universal state has been left as an idea which the future has to realise.

Political—The last great European war has exposed the dangers and weaknesses of the National states, and since then there is a growing tendency towards an organisation of states on an international basis. The establishment of the League of Nations is a first step on the way. Besides the growth of diplomatic relations, international conventions and treaties are hopeful signs of a coming universal state.

4 *Commercial*—In the present economic struggle no state can entirely depend upon its own produce With the growth of trade and commerce and facilities of communication, the whole world is becoming a common market for an economic demand and supply

5 *Industrial*—The international organisations of Trade unions, Socialism and Communism are all working for a world-wide organisation of labour and capital

6 *Legal*—The international law is fast perfecting itself, and in course of time it may be as good a law as an ordinary law

7 *Moral*—The states have learnt to act in concert for protecting the oppressed people and preventing wrong

8 *Social and cultural*—The modern world has begun to show 'intellectual sympathy for greatness (Sir Rabindranath Tagore and Sir Jagadish chandra Bose) Exchange of social feelings by travel and invitation, universal toleration of religion and attempts to have a common international language are breaking down barriers between different nationalities and tending towards union of states

Arguments against the Universal State—Laurent and other writers have put forword various objections against the idea of a universal state Bluntschli and Prof Gilchrist have refuted these objections as noted below

1 *The Universal State would be a monarchy* The objection is not real, as federalism is getting very popular, and everywhere it is meeting with success The universal state may be based on the principles of federalism to have a lasting effect It may be of the nature of the League of Nations

2 *It would do away with individual liberty* The objection is baseless as the universal state would concern itself with general interests of the people—peace, freedom of trade and commerce etc, and leave other interests unaffected

3 *It will be very difficult for the different peoples of the world to attain a 'standard of development' and organise themselves into a body* The objection is serious, but with the growth of education this might be possible in the remote future

4 *The Universal State cannot be a State as it is encom-*

patible with the modern conception of sovereignty. In an international state the question of sovereignty need not arise, as in the words of Prof. Gilchrist, "it is a higher manifestation of man's nature."

5. *In the world state the freedom of component states cannot exist.* But the world-state would not be so powerful in comparison with national states, as the national states themselves are in comparison with their citizens. When the liberty of the citizens is not threatened and rather protected in the national states, there is no reason why the liberty of the national states will not be protected and respected in the world state

6. *The national states would not like to yield to a higher power.* But the greatest national state is unable to cope alone, if it is in wrong, against the world power.

Questions

1. What is the nature of "International Law?" (C. U. Hon. 1915, 1921).

2. Discuss the following definition of international law, "International law is the aggregate of the rules determining and giving effect to the rights and duties of independent states." (C. U. 1915)

3. Explain what is meant by "International law." (C. U. 1917).

4. What are the sources of International Law? (C U. Hon. 1916).

5. Discuss the ideas of a Universal State. (C. U. 1911).

6. What objections have been urged against the possibility of a universal state. (C. U. 1912, 1914).

7. 'International law is nothing more than the moral code of nations.' Comment. (C. U. Hon. 1914).

CHAPTER XII

CITIZENSHIP

Growth of Citizenship *In the ancient age* citizenship was limited to those who directly participated in the sphere of government According to Aristotle neither residence nor participation of legal rights constituted citizenship The full citizen, in Aristotle's meaning, was one who worked in the state as jurors or legislators or both The prime qualification of Aristotle's citizen was his intellectual capacity to command and rule Those who laboured in order to live *e g*, the artisans, mechanics and other working classes were too dependent on commands of others than to develop their own capacity to command They were mostly recruited from prisoners of war and considered as slaves by nature According to the Greek idea, therefore, they could never be citizens Among the Romans, however there was a custom of *manumission* by which the natural rights of a slave could be restored

In the middle ages, there was very little popular freedom The aristocratic classes of feudal nobility dominated over greater portion of Europe, and the rest of population were either subordinate vassals or serfs Through the German Reformation of the sixteenth century, the later reformation in England, the great revolution in France, the Black death and Peasant Revolt in England, the emancipation of serf was completed in the eighteenth century Slavery was also gradually abolished

The history of the towns had a decisive influence on the development of modern idea of freedom and citizenship With a fusion of Roman law and Teutonic customs, the towns became centres of unity which helped to break down the barriers of separation between the privileged and unprivileged classes Civil constitution was first begun in towns which brought into being new corporations, guilds and councils in which various classes were merged in a new unity A citizen was then entitled to some share in the rights of self government, which the towns possessed for the regulation of

its own affairs. Representatives from towns were next summoned into assemblies of the state and the citizens gradually gained a distinct footing in the management of the state. From this position to the wider conception of modern citizenship was a next step.

In modern times, it denotes participation in powers and privileges of the state The Supreme Court of the United States has defined citizens as, 'those people who compose the state, and who in their associated capacity have established or subjected themselves to the dominion of a government for the protection of their general welfare, and for the protection of their individual as well as their collective rights"

Citizen v Elector. A citizen is said to have political rights. All the citizens in a state do not, however, enjoy political privileges. In every state there are minors, soldiers, and other disqualified citizens who are not electors. In some states the possession of electoral privilege does not by itself constitute citizenship. In the United States, says Dr Garner, "citizen and elector are by no means controvertible terms. In all of the states there are citizens who are not electors, and in some there are electors who are not citizens." A domiciled alien residing in any part state is an elector of that state, but he is not a citizen of the United States of America and, therefore, cannot stand for its presidentship.

Citizen v. Subject The term 'citizen' is applied to those who enjoy both civil and political rights of a state. The term 'subject' included all persons regardless of their civil and political status who come under the territorial jurisdiction of a state As Dr. Garner puts it, "to each inhabitant may be attributed the quality of citizen, when he is viewed as an active participator in the common will, and of subject, when he is thought of as a passive member with no share in political power" This distinction is clearly expressed in suitable terms of *citoyen* and *n ti naux* in France.

Strictly speaking all persons living in a state and owing allegiance to it may be called subjects : but in the present democratic age the term is looked upon with disfavour for its historical association with feudalism and absolutism, and is generally used to describe the members of any political community living under the suzerainty of a hereditary monarch. (cf. India)

Citizen v Alien In modern states the people may be broadly divided into two classes namely citizens and aliens The best way to understand what a citizen is, would be to distinguish it from what he is not He is not an alien

All citizens owe allegiance to the state, whereas aliens do not, and in special circumstances, may owe temporary allegiance which is a negligible factor The citizens enjoy both civil and political rights, but the aliens have only civil rights

Rights of the Alien They enjoy almost all the valuable civil rights in a state e.g., (i) right to protection of the person and property, (ii) right of holding all forms of property and power of disposing them off, (iii) right of suing in court and getting redress, failing which, the right of claiming diplomatic interposition, (iv) right of immunity from conscription into military service and other minor rights

Disabilities of the Aliens Although they pay taxes and cesses yet they are not allowed any political right Any undesirable alien is also liable to be expelled on grounds of political exigency

Acquisition of Citizenship Citizenship may be acquired by one of the following ways —

1 Birth or descent

2 Naturalisation

Citizenship by Birth There are two principles which govern the acquisition of citizenship by birth, viz —

(*a*) *Jus Sanguinis or blood relationship*— According to this principle, if the father is a citizen of a state, his children have the same rights in relation to the state On the same ground, if the father be an alien, his children are also aliens This principle is based on the personal law of the Romans, and seems to be natural and reasonable But there is a disadvantage of getting accurate proof of parentage in all cases Austria, France, and Italy have incorporated this principle into their legal system

(*b*) *Jus Soli or the place of birth*— According to this principle, all persons born within territorial jurisdiction of a state are citizens Children of citizens born abroad are aliens and children of aliens born within the territory of a state are citizens This principle is an outcome of feudal ideas of

territorial sovereignty of state by which individuals were related by birth to the land to which they were attached. Argentina Republic and some other states strictly follow this principle The principle no doubt affords easy proof of the fact of citizenship, but it is not logical, as it makes one's status depend upon the place of birth, which is merely an accidental circumstance.

Mixed Principle.—England and the United States of America have combined both the principles and adopted a mixed principle. As regards sons of aliens born in their own territory they followed the doctrine of jus soli (place of birth), and in respect of children born abroad of their own citizens they apply the principle of jus sanguinis (blood-relationship). All children born of English or American citizens in any part of the world are English or American citizens, and children born of alien parents residing in England or America are also regarded as citizens of those states.

Double Nationality and Conflicts of Jurisdiction —The mixed principle adopted in the laws of England and the United States have led to cases of double nationality and consequent conflict of jurisdiction. To give a concrete example, a child born of a French citizen in the United States is a French citizen under French law which follow strictly the principle of jus sanguinis ; but by the laws of the United States a child born within the state of French parent becomes a citizen of the United States as well, on the basis of the principle of jus soli, which is applied in that state to all children born of alien parents.

Methods avoiding conflicts of juriction.—Two methods are generally adopted to avoid conflicts of jurisdiction, viz. (i) The states do not admit the claims of any citizen whose status is in dispute, and who remains outside the jurisdiction of such states. (ii) *Persons of* double nationality are given an opportunity to elect their alienage or nationality on attaining majority

Naturalisation. This is another process by which a foreigner can acquire the rights of citizenship. In various ways aliens are granted rights of citizenship in a state :—

In the widest sense, it takes place through (i) legitimation, (ii) adoption, (iii) marriage, (iv) purchage of real estate,

(v) law of domicile, (vi) service and (vii) bestowal of rights of citizenship on large bodies of inhabitants when a new territory is annexed by conquest

In the restricted sense, it is a direct grant of the state by which a court or a responsible executive officer is authorised to naturalise an alien after certain prescribed conditions are fulfilled by him This is naturalisation proper, as it is a distinct act of the state by which a foreigner is converted into citizenship of the state

Conditions required for naturalisation—All states prescribe the conditions of good moral character and residence of the applicant within the state *for a certain period* The residence qualification is not uniform in all the states, and in special circumstances the duration is reduced by the laws of the state

In the United States, there is an additional condition that only *white persons* and *persons of African descent* can be admitted to citizenship by naturalisation The Indians, Chinese, Japanese and the Burmese are excluded as they are neither 'white persons' nor 'persons of African descent'

Status of naturalised citizens—There should not be any difference between the status of natural born and a naturalised subject. The effect of naturalisation is to place all aliens so naturalised on a footing of equality with natural born citizens in respect of all the rights and privileges of a state But in almost all the states there are some restrictions on the rights of naturalised citizens

England The English law make a distinction between *naturalisation* and *denization* The former is the result of an Act of Parliament, while the latter is created by Letters Patent of the Crown Naturalisation confers full citizenship, while denization meets half way between the rights of a national born subject and an alien A denizen has all other rights except that he cannot be a member of the Privy Council or of either House of Parliament, hold any high post under the government or take a grant from the Crown

England does not count upon naturalised citizens of Russian and Turkish origin to be British subjects, when they reside in those countries, as those states do not renounce their

claim of citizenship of their natural born subjects. (Read 'Expatriation' under heading "Loss of Citizenship").

France and Belgium · They make a *distinction* between *grand naturalisation* and *ordinary naturalisation*. The former places an alien on a footing of political equality with a citizen of native birth, and the latter restricts some of its privileges.

The United States : There is only one reservation that a naturalised citizen cannot hold the offices of President and Vice-President of the United States.

Citizenship in Federal States. In Federal States there is a dual aspect of citizenship : one federal or national, relating to the central organisation, and the other, local, concerning particular state or states.

United States · In the United States the federal citizenship and the state citizenship are not identical and in some case not co-existent There are many state citizens who do not possess all the rights and privileges of national or federal citizenship. As for example, an alien who may be a naturalised citizen of a state cannot stand for offices of President or Vice-President of the federal state. Similarly there are many federal citizens who are not endowed with the citizenship of any particular state. As for example, there are many citizens of the United States living in its territories, dependencies, several federal districts and abroad who are not citizens of any particular state.

In the United States national citizenship does not by itself create state-citizenship. In order to be a citizen of any particular state, there is an additional condition that one must be resident of that state. The states can also confer citizenship on aliens residing within their territories. It is an anomaly that such naturalised aliens have the right of voting, but they cannot stand for election of President or Vice-President of the United States. National citizenship in the United States is put on a higher level than state citizenship. A citizen is first a citizen of the United States, and then a citizen of a particular state, if he is a resident of that state. Dr. Garner, therefore, observes that "citizenship of the United states is primary and original, and that of the states, secondary and derivative". A state citizenship can

be relinquished and acquired by change of residence from one state to another without any legal formality

Germany—In the old German Empire state citizenship was paramount over imperial citizenship The citizenship of a state was a condition precedent to imperial citizenship If any one lost his rights of citizenship in any particular state, he forfeited his imperial citizenship also at the same time Dr Garner, therefore remarks that 'state citizenship in the German Empire is original and primary, while imperial citizenship is derivative and secondary'

Loss of Citizenship—Citizenship may be terminated in various ways —(i) *Marriage* Women lose their citizenship by marriage to aliens (ii) *Absence* the right of citizenship is lost by long and continued absence from the native state (iii) *Expatriation* The citizens can expatriate themselves, that is to say, can voluntarily resign their citizenship in the states of their origin, and take up a new allegiance in the states of their adoption Russia and Turkey deny this right to their citizens while all other states allow it with certain restrictions The opposite process is called *Repatriation* by which the old nationality voluntarily abandoned by the citizens can be resumed (iv) *Acts of the state* Citizenship can be withheld or terminated by the acts of the state *e g* expulsion of a subject from the territory of a state for treason or other causes

Rights of Citizenship Citizens enjoy all the legal rights civil and political, and all the privileges of the state In democratic states all the citizens are granted equal amount of civil rights and a large proportion is vested with political rights (See Chapter IX page 71)

Duties of Citizenship (i) The first duty of a citizen is to obey the laws of the state The state promulgates laws for peace, security and good government of the country and unless these laws are respected and obeyed by the citizens, the state becomes handicapped in furthering the interests of the community (ii) The next important duty of the citizen is to render allegiance to the state Allegiance includes services in war, support to public officers in the discharge of their duties in maintaining peace, services in the public bodies by holding public offices and recording votes (iii) One of the important duties of the citizens is to pay taxes and cesses. Government

requires money for its work and the chief source of its income is taxation.

Hindrances to Good Citizenship. Lord Bryce has summarised several causes that stand in the way of good citizenship. They may be grouped under three main heads :—(i) *Indolence* : that is, apathy towords all public concerns, on account of indulgent spirit or attraction of other interesting and lucrative professions such as art, science, trade and commerce. (ii) *Self-interest* Actuated by selfish motives to gain distinction and superiority in public estimation, citizens sometimes stoop to many corrupt practices at the time of election. The candidates bribe the voters, bestow unusual favours on them and if required, exert personal influenee to secure their votes. The voters also vote for such candidates who could be useful to them without referenee to the welfare of the entire community. (iii) *Party-spirit* It is a healthy sign in a progressive state if it is based on a sound principle of eommon benefit, but it is apt to degenerate into a party struggle for political power of a particular portion of the eommunity. (Read Party Government).

Public Spirit and Patriotism.—*Public spirit* might be defined as a disposition in any one's mind to promote the interest or advantage of the community.

Nature and contents :—(i) Spirit of self-sacrifice for the good of the public is the essential characteristie of a publie-spirited man. (ii) He must be dominated with a strong will of serving humanity at large (iii) He must have extended sympathies, varied knowledge, and certain catholicity of thought, for narrowness of mind will dwarf all his latent faculties. (iv) He should take keen interest in all the occupations and proceedings of those that surround him. He should, therefore be very social with his fellow beings, and come to intimate touch with them so that he may be aware of their needs and grievances, and may have a first hand information of their views regarding any communal or public question. (vi) Fixedness of purpose, and concentration of effort are the virtues which he should practise in determining what would benefit the publ.c. (vii) He must have power of organisation and control. (viii) Above all he should be a lover of justice and truth, and have a sense of responsibility to carry out his

purposes which he thinks conducible to the welfare of the public

Conditions favourable to its growth —(i) Home influence and early training—General interest in human affairs is a feeling which can be learnt and enlarged by early training. The chief part of this great work must be done by the mothers, or at any rate by those who are nearest to them in relationship, or who come into closest contact whith them

(ii) School and college education—Educative facilities are no doubt given by such institutions, but there the softer feelings which make a man worth his name are also grown and matured The institutions impart general knowledge, but side by side the pupil learns the virtues of fellowship and co operation, self sacrifice and service of humanity, toleration and catholicity of mind, and similar qualities which go in a great way to build up future public spirited man It is needless to mention how Hostel life of the students promote the growth of such virtues

(iii) Freedom of thought and action—Given the virtues required for a public spirited man, he must have facilities for his thought and action He must be allowed to address public meetings, hold conferences and formulate clubs and societies for free discussion of public grievances

(iv) Freedom of press—Newspaper is the mouthpiece of a society to ventilate public opinion Every civilised Govern ment give liberty to the press with certain reservations A puhlic spirited man requires the help of the press to organise works of public utility and to gauge the public opinion on any subject

(v) Great examples foster greatness—The noble examples of public spirit shown by great men on the past are the living incentives to those who work in the present, and they in their turn, leave behind them recollections for those who are to work in the future

Patriotism—Love of one's country, the passion which moves a person to serve his country, either in defending it form invasion or in protecting its rights and maintaining its laws and institutions All civil virtues, all the heroism and self sacrifice of patriotism spring ultimately from the habit men acquire of regarding their nation as a great organic whole,

identifying themselves with its fortunes in the past as in the present, and looking forward anxiously to its future. "Where the heart is right, there is true patriotism."

Public Spirit and Patriotism :—Patriotism embraces larger sphere of action than public spirit. A public-spitited man limits his action to a particular cummunity or institution or a subject, but a patriot has the whole country his field of action. His objective is not local, but the all absorbing concern of the country at large.

Questions.

1. What constituted a citizen accordiog to Aristotle. (C. U. Hon. 1909)

2. What are Aristotle's ideas as to the status of the artisan class? Compare and cootrast these with modern and mediæval ideas on the subject. (C. U. Hon. 1910, 1915.)

3 Give a brief history of the rise of the citizen class in Europe. (C. U. 1914)

4. "The citizenship of the town gave birth to the modern citizenship of the state." Explain and illustrate this. (C. U. 1912.)

5. Differentiate between Citizens, Subjects and Electors. (C. U. 1915.)

6 "Children born abroad of United States citizens are American citizens *jure sanguinis*, while children born in the United States of aliens are Americans citizens *jure soli*." Elucidate the statement, and explain clearly the principles governing the acquisition of citizenship.

7. What is 'Naturalisation'? Is there any distinction between a natural born subject and a naturalised subject?

8. 'In the United States, federal and state citizenship are not identical'. Amplify.

9 What are special privileges of citizenship in modern states. (C U Hon. 1914)

10. "Citizens if they are truly citizens ought to participate in the advantages of the state." Enumerate the duties of a citizen. (C. U. Hon. 1916.)

11. Define the nature and contents of 'public spirit'. What in your opinion are the conditions favourable to its growth? What are the essential elements of 'patriotism'? How would you differentiate it from 'public spirit.' (C. U. 1920.)

CHAPTER XIII

CONSTITUTION

Definition and Meaning. The term 'constitution' has been defined by different writers in different ways According to Woolsey, it is 'the collection of principles according to which the powers of the government and the rights of the governed and the relation between the two are adjusted Prof Dicey defines it, as 'all rules directly or indirectly affecting the distribution or the exercise of the sovereign power of the state Bryce has defined it as "the aggregate of the laws and customs through and under which *the public life of the state goes on*" *Lenoock gives a short* definition of it, as "the form of any particular state"

In the wide sense, the term means the totality of all the constituent elements which go to make up the physical and *political organisation of the state In the restricted sense* it refers to the documents which contain the fundamental laws of the state

Every state must have a body of fundamental principles called its *constitution* Of these *principles some may exist* in written form in a constitutional document enacted at a given time by the sovereign authority, and others of equal value and *importance resting on long* standing custom and usages

Written and Unwritten Constitution The traditional classification of constitution is (i) written and (ii) *un written*

In a *Written Constitution*, the fundamental principles rules and powers of the government are reduced to writing in a single document, As Dr Garner observes, 'It is a work of conscious art and *the result of a deliberate effort to lay down* once for all a body of coherent principles under which government shall be organised and conducted" The United States and France have written constitutions

In an *Unwritten Constitution* there is no such element of a written document of articles of constitution. The form and rules of government are based upon customs and usages of the country. Such a constitution is not made out of any human effort, but it grows with expansion of national life. England is the perfect example of an unwritten constitution.

Criticism : The classification of constitution into written and unwritten has no substantive value. The distinction is really one of degree than of kind. There is no such constitution which is wholly written or wholly unwritten. England, the conspicuous example of an unwritten constitution, has many statutory written documents—the Magna Charta, the Bill of Rights etc., which are the basic principles of the constitution On the other hand, the United States which has a written constitution is guided by many rules and principles which do not find place in the articles of constitution. The organisation and powers of the political parties, the method of electing the president, the restriction of the third term of the president are some of the examples of customary usages which are acted upon along side with the written constitution Similarly the constitution of Italy is generally classified as written, but it is overwhelmed with the growth of customs and conventions, and more accurately resembles to the British constitution than to the constitution of the United States.

Flexible and Rigid Constitutions The classification of constitutions into written and unwritten is confusing and unscientific Lord Bryce has, therefore, classified the constitutions into flexible and rigid types. The basis of his distinction between each type is the relation of the constitutional laws to the ordinary laws and the ordinary authority which enacts these laws.

A state is said to have a *flexible* constitution in which (i) the constitutional laws are in the same level with those of the ordinary laws, and (ii) both of which proceed from the same source, and (iii) in which the constitutional laws can be altered in the same way as other laws. It does not matter whether the laws are embodied in a single document or consist largely of conventions. The conventional element generally predominate in a flexible constitution.

A state has a *rigid* constitution in which (i) its constitutional laws are placed in a higher footing than the ordinary laws (ii) the articles of constitution are mostly written in a single document (iii) the constitutional laws and ordinary laws proceed from different sources and in which (iv) the constitutional laws can be amended or repealed by a process different from that of the ordinary laws and that by some authority above and beyond the ordinary legislative bodies whether federal or state legislatures under the constitution

England The constitution is flexible in as much as every law of every description call it constitutional or civil can be legally created, amended or repealed by Parliament In the eye of law there is no distinction between a statute and a constitutional enactment

Italy It s in half way between flexible and rigid constitutions

United States The constitution is rigid, that is, any article of constitution cannot be legally changed either by the Senate or by the House of Representatives The constitutional law has higher legal authority than the ordinary laws

France The constitution is rigid The French Parliament acting in its ordinary capacity cannot amend or repeal any constitutional law

India The constitution is rigid in the sense that it cannot be changed in any way as ordinary laws by the Indian Legislature

Germany The constitution is rigid

Merits and Demits of Each Type

Merits of Flexible Constitution —(i) The chief merit of the rixible constitution is its elasticity, changes can be made in the constitution without rousing any popular passion A flexible constitution can be twisted to meet great emergencies In England there is little chance of an open revolution, and important change can be made through ordinary legislature without any violent overthrow In 1832 Parliament enabled the nation to carry through political revolution under the guise of a legal reform In France the rigid constitution provoked many revolutions, and endangered the safety of the country (ii) It fosters the growth of national life as it

'is flexible to the pressure of national will.' There is no sanctity or sacredness attached to it, as with the rigid constitutions, and therefore, not susceptible to violent resistance by the masses at the time of any change.

Drawbacks of Flexible Constitution—(i) It is unstable. The constitution being alterable by the ordinary legislature is subject to frequent changes. As Prof. Sidgwick had said, "valuable rules and institutions may be abolished in a transient gust of unpopularity, and thus lose the stablity given by antiquity and unbroken custom." But Prof. Bryce has contended that flexible constitution is not unstable, as the legislative assembly is very cautious and moderate in amending the fundamental principles of the constitution. (ii) The frequent changes create abnormal party feeling within the country (iii) It is not suited to democracy in as much as the masses do not understand the fundameotal principles, unless they are simple and definite. The rigid constitution as embodied in a written document has the advantage of being clearly understood by the people. (iv) Flexible constitution can only be adopted by a community whose political training has reached a high degree of perfection. (v) It vests too much power of discretion in the hands of the public officers and there is a danger of usurpation of public rights.

Merits of Rigid Constitution. (i) It has the advantages of definiteness and certainty. Being embodied in a written document its provistons can be ascertained by a reference to the documentary terms. (ii) It is a more stable than the flexible constitution, as its provisions cannot be amended so easily as is the case with the ordinary laws. (iii) It safeguards individual liberty. (See below, 'Rigid constitution and Individual Liberty.')

Drawbacks of Rigid Constitution.—(i) It is inelastic, and sometimes necessary changes are prevented on account of the difficulty in the process of amending the constitution. (ii) There is a risk of revolution, as the fundamental principles cannot be easily changed when found necessary. (iii) It retards healthy growth of a nation, as reforms cannot be easily carried into effect. (iv) The party struggles are based upon broad questions of national concerns, and therefore, keener than in Flexible constitutions. (v) It is too much embar-

rassed with technicalities, when any change is proposed statesmen, instead of considering the expediency of the change are more or less engaged in determining the question of its legality

Prof Bryce has summed up the advantages and disadvantages of both the forms when he says, 'as adaptability is the characteristic merit and insecurity the characteristic defect of a flexible constitution, so the drawback corresponding to the durability of the rigid constitution is its smaller capacity for meeting the changes of economic, social and political conditions and its greater liability to revolutionary attack."

Rigid Constitution and Individual Liberty" It is said that the Rigid constitution safeguards individual liberty better than the *Flexible constitution. As the powers* of the Government are definitely fixed by the articles of the constitution, the individuals are free from unconstitutional interference by government The Rigid (written) constitutions clearly declare the rights of the individuals in relation to the state The value of the *rigid constitution has been grossly* exaggerated in this connection Prof Burgess has gone so far as to say that the constitution of England does not guarantee civil rights ('Read Guarantee of civil rights,' England, America and France—Chapter IX)

Essentials of a Rigid constitution *According to* Dr Garner typical written constitution must contain the following three provisions—(*a*) A declaration of civil and political right of the people with a proper security against governmental interference' thus guaranteeing individual liberty (*b*) A governmental *organisation for carrying out the administration* (*c*) A procedure by which the constitution can be amended which make up the sovereignty.

Gettell mentions the following chief *requisites of a rigid constitution* —(i) Definiteness The articles of constitution should be clearly worded so as to avoid any vagueness. (ii) Comprehensiveness: 'The constitution should cover the whole field of government including its organisation, distribution of powers, appointment of officials, the constitution of the electorate' etc and (iii) Brevity: The constitution should be as simple as possible and it should avoid complexities.

Dr. Garner observes, the constitution of the United States is in respect to its content and scope, the model of written constitutions.

Distinction between Statute Law and Constitutional Law From a legal point of view there cannot be any difference between statute law and constitutional law, as all laws are commands of the sovereign But for practical purposes a distinction is observed, firstly, as to their method of enactment, secondly, as regards their content and thirdly, as to their relative value.

As regards enactment :—In a flexible constitution the mode of enacting constitutional law is same as that of the statute law. In England, all laws whether statutory or consitutional are enacted by Parliament and can be changed by the same authority. In rigid constitutions the *modus operendi* is different. statute law is created by the ordinary legislature, but constitutional law is created or amended by a separate body. (Read 'Amendment of constitutions'—The United States, France etc)

As regards content. Statute law is concerned with minor details of government for regulating the conduct of the citizens Constitutional law deals with fundamental principles of government, their organisation and their relation with the governed. A flexible constitution recognises this distinction only between the two sets of law.

As regards their relative value. In flexible constitution they are of equal value as both the laws proceed from the same source which is the sovereign authority in the state, and neither of them can have superiority over the other. In England, a law may be "unconstitutional" if it violates the established customs and usages of the country, but nevertheless it is legal. No court in England would refuse to give effect to such an Act of Parliament on the ground of its unconstitutionality. In rigid constitutions, the constitutional law emanates from the sovereign authority of the state and the statute law is created by the ordinary legislature. Consequently constitutional law has superiority over the statutory law which can be declared illegal by the courts if it conflicts with the constitutional law.

Amendment of Constitution In *flexible constitutions* amendments are carried out by the ordinary legislature, as in England by the Parliament In *rigid constitutions* they are done in different ways Prof Gilchrist mentions four such methods — (i) The power of amending the constitution may be given to the ordinary legislature subject to certain rules about fixing the quorum and minimum majority Holland, Belgium, Norway and Portugal follow this method

(ii) A different organ altogether is created for amending the constitution As for example, in the United States a Convention is called either by two thirds of the members of each House of congress, or two thirds of the members of the state-legislatures, and in any case the amendment proposed is to be ratified by three-fourths of the states before it can be considered as a part of the constitution In France, an amendment is considered individually by the two Houses and then carried into effect by the National Assembly consisting of the members of the two Houses sitting together at Versailles

(iii) It often happens that in the Federal states, the local authorities are at first consulted, and their consent is taken before any amendment is taken up Switzerland and Australia follow this example

(iv) In some states amendment can only be carried out by the entire people It is followed in Switzerland and some part states of the United States

Development of the Constitution From the point of Public Law, it may be said, that flexible constitutions are not made but gradually grow, and rigid constitutions are definite instruments created at a particular point of history (Read, '*Governments are not made but grow*', pp 36 37)

The statement is not wholly correct The Flexible constitution no doubt grows but in course of progress it is moulded by public opinion and regulated by the exertion of human will Rigid constitutions, although created at a certain date do not exhaust all the fundamental principles required by a progressive state It cannot be said that it reached its final form at the time of its inception It must therefore grow for a further development As Dr Garner observes, 'the written law must correspond with the economic, political and social conditions of society" A Rigid cons-

titution also grows in three ways :—(i) by usage, (ii) by judicial interpretation and (iii) by formal amendment.

'*The modern tendency in constitutions is towards rigidity.*'' —There is not a single instance of a new flexible constitution in the history of the states. Even the existing flexible constitutions are becoming rigid. After the last European war Austria has changed its constitution into a rigid type. Italy has already a mixture of flexible and rigid constitutions There is a danger of rigidity even in the constitution of Great Britain.

Prof Gilchrist mentions several circumstances favouring the adoption of rigid constitutions :—(i) There is a general desire to restrict the powers of government so as to increase the rights of the people. (ii) Democratic countries grant definite constitutions to the subordinate bodies to avoid controversies regarding the principles of government. (iii) Whenever a constitution is changed, people desire to make a new constitution definite and explicit. (iv) Federalism is the popular demand of the modern states, and the rigid constitution is the essential element of it.

Questions.

1. Define constitution of a state.
(C. U. 1919, 1921, 1923 and 1927.)

2 Distinguish between rigid and flexible constitutions. Are the constitutions of (a) America, (b) France, (c) Germany, (d) England, (e) India, rigid or flexible. Give your reasons
(C. U. 1919, 1920.)

3. What is the greatest weakness of a written constitution ?
(C. U. 1923.)

4. 'If the inflexibility of the French constitution has provoked revolutions, the flexibility of English institutions has once at least saved them from violent overthrow.' Criticise the statement.
(C. U. 1915)

5. Write an essay on—Written and Unwritten constitutions.
(C U. 1913)

6. Contrast the process of constitutional amendment in England, France, Germany and the United States.
(C. U. Hon. 1914.)

7. 'Constitutions grow and are not made' Criticise the statement with special reference to the constitution of India. (C U. 1924)

8 Distinguish between 'Statute Law' and 'Constitutional Law' as conceived in England, France and the United States

9 "The modern tendency in constitutions is towards rigidity" Explain the circumstances that favour the adoption of rigid constitutions. What are the essential conditions of rigid constitutions?

CHAPTER XIV.

THE THEORY OF SEPARATION OF POWERS

Governmental Powers

1. *Dualist Theory* —Some writers especially among the French, e g Du Crocq and Duguit recognise only two classes of governmental powers namely, the legislative, that which expresses the will of the state, and the Executive, that which enforces and carries out that will

The Executive Department is subdivided into three classes —(i) Purely Executive in character, which is concerned with the task of supervision, direction and execution, (ii) Administrative in character, which is concerned with technical works of executive function, and (iii) Judicial in character, which *is concerned with the application* of law to concrete cases The Judicial department, according to them, is not a separate and an independent organ but a branch of the Executive

Criticism :—(i) The functions of the judges are not only to apply the law to concrete cases, but also to determine whether a particular law should or should not be applied to a particular case Apart from execution of law the judges

have definite functions of determining the law. The judicial power is therefore not an incident of executive power.

(ii) The legal decisions are generally followed by executive action in as much as actions have to be taken on the orders passed by the judges; but in many judicial decisions, especially those which are non controversial, there is no question of execution of law Hence it is wrong to regard the judicial function as a part of the executive.

(iii) If the judicial power is made subordinate to the executive power, the judges would be mere agents of the executive, and they would render justice in its name.

2. *Trinity Theory* :—The popular usage is in favour of the trinity theory. Every government has to perform three functions—legislative, executive and judicial "The legislative function consists mainly in laying down rules of conduct for those subject to the jurisdiction of the state; the executive function consists mainly, though not wholly, in enforcing such of these rules as are in the nature of commands; and the judicial function consists in interpreting their meaning in order that they may be applied in particular cases."

The Theory of Separation of Powers. The theory maintains that the three functions of the government should be performed by different bodies of persons, neither body having a controlling power over either of the others. Each department should be limited to its own sphere of action, and within that sphere should be independent and supreme. The theory comes to mean, therefore, that "all the legislative power shall be exercised by the legislative department, or all the executive power by the executive department, or all the judicial power by the judicial department." The theory has been preached with a view to safeguard individual liberty of the state.

The French writers have maintained that judiciary is a branch of the executive, but the doctrine of separation of powers is upheld by rigidly separating "the function of administration, in the executive sense of the term, from judicial administration or the administration of justice, by taking away from the judiciary practically all power of control over the administrative authorities." In France, the government and its agents are free from the jurisdiction of ordinary courts.

Historical Development of the Theory The theory is the logical outcome of the processes of the development of the state At first all political power was vested in a chief or a king He was the absolute ruler—a law giver magistrate and judge in one and the same capacity With the evolution of the state and a corresponding increase in the political consciousness of the people these powers have been wrested from the hands of the absolute ruler and distributed among the people

The ancient political writers such as Aristotle, Cicero and Polybius recognised the three-fold division of governmental powers, but neither in the democratic Greek city states nor in the Roman republic the principle was actually carried into practice Throughout the middle ages the distinction between legislative, executive and judicial functions was not properly observed, at least the executive and judicial functions remained in the same hand, and it took long time to separate these two functions of government

Bodin in the sixteenth century was the first political writer to point out the dangers of allowing the prince to administer justice in person In the middle of the seventeenth century Cromwell in England separated the executive and legislative functions, but he did not fully recognise the independence of the judiciary John Locke, the political philosopher of the English Revolution, distinguished three powers—legislative, executive and judiciary, and urged the importance of entrusting each to a distinct and independent authority.

It was in the middle of the eighteenth century, that the theory was adopted as a cardinal doctrine of political science The French writer Montesquieu made the theory a doctrine of liberty "In every government," he said 'there are three sorts of power"—the legislative, the executive and the judiciary 'When the legislative and executive powers are united in the same person, or in the same body of magistrates there can be no liberty Again, there is no liberty if the judiciary power is not separated from the legislative and executive powers Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator Were it joined with the executive power, the judge

might behave with violence and oppression." Blackstone in his "Commentaries," repeats the same doctrine; and the writings of these two philosophers influenced the framing of the national constitution of the United States after the War of Independence.

Criticism of the Theory of Separation of Powers.

(i) "The trouble with the theory," says Woodrow Wilson, "is that government is not a machine but a living being," or in the words of Prof. Gilchrist, "the state is an organic unity." It is not a body of blind forces that can be used to produce a definite result, but a body of men carrying on different functions in response to their commands of instinct and intelligence for a common task and purpose. This co-operation is essential for a harmonious working of a government.

(ii) The doctrine as expressed by Montesquieu and Blackstone cannot rigidly be applied to any of the existing constitutions. There is not a single government in which its three departments—legislative, executive and judiciary are quite separate and independent of one another. Gettell has summed up the general relation of the departments in the leading modern states as follows—"In the United States, the executive is almost independent of the legislature, but is, in many cases, subject to the control of the courts. In France, the executive is subject to the control of the legislature, but is almost entirely independent of the courts. In Germany (old) the executive authority was independent of the legislature, and to a large extent, also of the courts. In new German constitution, responsible government has been introduced and the executive is now subject to the control of the legislature. In England, the executive is subject to the control of the legislature and in many cases also of the courts.

(iii) A complete separation of functions of the three departments of government is also impracticable. There can not be a strict line of demarcation between the departments. In all states the executive participates in some legislative functions, the legislature controls one way or other the executive and supervises its management, both executive and legislature exercise some sort of judicial functions, and the judiciary in its turn exercises some functions which are in nature legis-

lative and executive For fuller treatment on the subject—read Relation hetweeen Legislature, Executive and Judiciary, Chapters XX and XXI

(iv) It is not a necessary condition of individual liberty. Liberty does not depend on the mechanical *separation of* departments of government Had it been so, there would not have been any liberty in England, where executive and legislature are practically combined "Freedom depends on the spirit of the people and their laws and institutions, not on the mechanism of institution themselves' Read Chapter IX Individual Liberty—pp 74 76

(v) Absolute independence of the department is not desirable as it would lead to troublesome deadlocks As stated by J S Mill, 'each department acting in defence of its own powers would never lend its aid to the others , and the consequent loss in efficiency would outweigh all the possible advantages arising from the independence'

(vi) The theory makes the departments equal and co ordinate in power. In fact the departments are not equal in power The legislative department of the government is the most powerful of the three, as it expresses the will of the state in the form of law which the judiciary interprets and the executive enforces It also controls the other departments through its power of granting supply and creating public offices and providing for their support

(vii) The theory has proved to be harmful in practice In the United States the election of the judges and executive officers resulted in much evil

True Meaning of the theory. The three departments of government have got separate functions to perform, but truly interpreted, the doctrine of separation of powers does not mean that each department is exclusively connected with its own functions No doubt each department exercises essential part *of its own functions*, but *incidentally*, it has to exercise other functions quite different from those of its own so as to enable itself to perform its own functions efficiently The three departments, therefore, co-ordinate with each other maintaining their individual identity as independent branches *of one* and the same government

The Theory of Separation of Powers in Practical Politics :—

1. *The United States.*

The theory of separation of powers has been carried too far in America. It is embodied in its constitution that the legislature shall never exercise the judicial and executive powers ; the executive shall never exercise the legislative and judicial functions and the judiciary shall never exercise the legislative and executive powers. A legislature is directly elected by the people ; a set of executive officers is separately elected by the people or by their representatives , judges are similarly elected So there is a separate election and independent tenure of office on the part of three departments of Government.

But still the separation is not complete, in as much as (i) the executive has a share in legislation—the President having a partial veto power , (ii) the legislature, by its share in the appointing power, its right of impeachment, and its control over taxation and appropriations, exercises authority mainly administrative in nature ; (iii) the judiciary (The Supreme Court) has power to decide on the constitutionality of the acts of the two other branches of the Government. Besides this, officers of the Government acting in their official capacity are subject to the jurisdiction of ordinary courts. So we find that within the machinery of the Government the separation is not complete.

2. *France.*

The theory of separation obtained during the revolutionary era in France But at present, the separation of powers as observed in its parliamentary government, is not complete. The President is elected by the legislature ; his ministers who are in reality the administrative heads of the country, are representatives to the majority of the Chamber of Deputies, and are responsible to it for their actions. In one way, however, the separation is maintained in France. The officers of the Government are not tried in the ordinary law courts. There are sepatate administrative courts—*tribunaux administratif*, to try the officers in their official capacity. The ordinary courts are not empowered to question the validity of an act of the legislature. The system seems to protect the executive

and judiciary from the control of the legislature This executive independence actually results in considerable limitation on civil liberty, which the theory of separation of powers professes to maintain

3. *Germany*

Before the last great war the emperor of Germany was the head of the executive As a Prussian King he could also influence the course of legislation in the Bundesrath through the Prussian votes The Bundesrath had many administrative powers It was also a judicial body, and could appoint judges of the chief court The theory of separation of powers did not, therefore, apply in German constitution

In the new German Republic, the executive is made responsible to the Reichstag, and the theory of separation of powers is further nullified

4 *Great Britain.*

The theory of separation of powers is not applicable to the British constitution The cabinet consists mainly of the heads of departments, which carry on the executive works of the government, but it is also a committee of the legislature, that guides the courses of legislation and is ultimately responsible to it "There is," observes Courtney Ilbert, "no such separation between the executive and legislative powers as that which forms the distinguishing mark of the American constitution," but the relation is one of intimacy and interdependence The House of Lords which is the upper chamber in the legislature is also the supteme court of appeal The judiciary is subordinate both to the executive and the legislature, being appointed by the one, and dependent on the other for its subsistence The constitution of England proves, therefore, a complete negation of the theory of separation of powers Madison has, however tried to support Montesquieu's theory by saying, that in England the entire body of legislature does not form the executive or the judiciary It is only "where the whole power of one department is exercised by the hands which hold the whole power of another department, the fundamental principles of a free constitution are subverted." But in England, the functions of legislation and execution are in fact entrusted to separate

organs even though one is controlled by and is responsible to the other.

Questions.

1. Say what you know of the theory of Separation of Powers, and examine its influence on practical politics in France and in America. (C. U. 1913)

2. 'The perfect separation of powers,' says Dr. Garner, 'is not only theoretically sound as a working principle, but it is not one to be desired.' Explain how. (C. U. 1924)

3. 'The doctrine of the separation of powers has never been anything more than a theory and an ideal.' Justify the remark.

4. Examine the theory of Separation of Powers. How far has this theory been translated into practice in Great Britain, France and Germany. (C. U. 1928)

5. In what sense and with what limitations is the theory of separation of powers true? (C. U. 1926)

CHAPTER XV.

FORMS OF STATE.

Classification of States. It is a difficult problem to classify states, as all of them have common characteristics. Attemps are, however, made to classify them on the basis of their constituent elements, namely, Territory, Population, Government and Sovereignty.

Territory and Population: These do not afford scientific bases of classification. The states may be large, medium or small; they may contain larger or smaller number of population. In Political Science such classification has very little value, as they do not distinguish states in their fundamental characteristics.

Government: Leacock, Gilchrist and some other writers have tried to classify states on the basis of different forms of government. The government is the only external manifestation of the state, and classification of government becomes in essence classification of states. State and government are not considered identical; only the form of government is taken as a basis of division.

On the other hand, there is a large school of political writers, who comprehend that classification of states on the basis of different forms of government is unscientific, illogical and misleading on the following grounds —

(i) Gettell remarks that the state is not completely organised in its government In classifying states on the basis of government only the other important element, namely, 'unity' is left behind

(ii) In some states the legal sovereignty may correspond with government, but the political sovereignty is always located behind all governmental organisation The classification of states on the basis of forms of government does not, therefore, take account of legal sovereignty in many states, and the political sovereignty in any state

(iii) Dr Garner observes, 'To classify states on the basis of the nature and forms of their governments is very much like classifying railroads, for example, with respect to the *organisation of their board of directors* Such a classification in its last analysis is nothing more than a classification of governments, not a classification of states"

In justification of his remarks he says that *the forms of state cannot be identical with forms of government* All states are pure, that is, a state is either monarchical or aristocratic or democratic There cannot be a state made up of a combination of the three elements, The state is a unity in itself, its sovereignty cannot be divided into parts On the other hand, all modern governments are mixed, that is, they are composed of *monarchical, aristocratic and democratic* elements In modern states, there is hardly any government which is purely monarchical, or purely aristocratic, or purely *democratic* Such *mixed type of governments* cannot be identical with *pure forms of state* A few years before, Turkey was cited as an example of this identity, but at present, there is not a single government in Europe, in which power has been entrusted to an individual ruler England is really a democratic state with a government having all the three elements of monarchy, aristocracy and democracy Similarly a democratic state may have a government organised upon an aristocratic basis It is illogical therefore to classify states on the basis of the forms of government

(iv) The distinction between state and government should be *strictly observed, and each should be classified on* a distinctive principle of its own. In classifying states on the basis of governmental forms, Leacock has practically identified the state with government.

Sovereignty According to Dr. Garner, the true basis of classification of states lies on the location of sovereignty in several states The states are to be classified 'on the basis of the number of persons in whom the sovereign power is vested' Aristotle long ago classified the states on the basis of this principle, and his classification is still upheld as the only scientific method of classifying states. The classification of government is based on a different principle and is dealt with in a separate chapter.

Aristotle's Classification of States: Aristotle classifies states on the basis of the following two principles :—

The *first* principle is according to the number of persons in whom sovereign power is vested. If the sovereign power vests in one person, the state is a monarchy ; if in the hands of a few, it is aristocracy , and if it is controlled by a body of citizens, the state is a polity.

His *second* principle is according to the end to which the conduct of government is directed. The true end of the state is the perfection of all its members. When the government is administered with this end in view, the state is pure ; and when the administration aims at the interest, not of all its citizens but of the governing body alone, the state is corrupt. Monarchy, Aristocracy and Polity are the normal forms and the respective corruptions are Tyranny, Oligrachy and Democracy. His classification, therefore, assumes the following form :—

Sovereignty of	Pure form.	Perverse form.
(i) An individual.	Monarchy.	Tyranny.
(ii) The Few.	Aristocracy.	Oligarchy.
(iii) The whole people.	*Polity.*	*Democarcy.*

Criticism of Aristotelian Classification.

Aristotle's classification is open to many serious objections which are stated as follows :—

1. It does not rest on any 'organic fundamental principle, but simply upon the number of persons who compose the sovereign authority It is, therefore, quantitative rather than qualitative in character

The answer to this criticism is that Aristotle classifies the states on the basis of the different stages in the development of political consciousness of the people, which is the practical test of distinguishing one form of state from the other If the political consciousness is developed fully among the masses of the people, the state is Polity, if it is restricted to the few, the state is Aristocratic, and if it is limited to an individual, the state is monarchical Critics like Von Mohl and others ignore the distinction between pure and perverse forms in Aristotle's classification of states when they say it is simply quantitative and not qualitative

2 Prof. Seeley criticises Aristotle's classification on the ground that it is not applicable to the various types of modern states The 'city states' of Aristotle cannot be placed in the same class with the modern 'country states'. In the Greek city states, all the citizens participated in the work of government, whereas, in modern states, government is carried on by the representatives of the people

This objection is also not tenable. In classifying states the distribution of governmental work need not be taken into account Dr Garner, therefore, remarks "in essence the states of antiquity were not different from those of today, though of course there was a wide difference in the form and character of their governments".

3 Prof Leacock objects to Aristotle's classification on three grounds, viz,—(i) The term Democracy as used by Aristotle opens the way to great confusion. Democracy is not used, at present, in the same sense as Aristotle conceived Aristotle's Democracy was a rule by a mass of the people, whereas, modern Democracy is a government by a few chosen representatives of the people, which more aptly resembles with Aristotle's Aristocracy (ii) Aristotle's classification does not take account of the differences between a Federal and a Unitary government, and makes no distinction between Parliamentary and Non Parliamentary governments (iii) It does not discuss any adequate treatment of Constitutional or Limited Monarchy and

1. *Real Union*: It is a form of composite state where two or more separate states indissolubly combined under the same monarch, having merged their sovereignty into a common state, but retaining internal autonomy distinct among the component parts. The more notable examples of Real Unions are Austria Hungary before the war, and the union of Norway and Sweden from 1815 to 1905.

2. *Confederation* It is a voluntary union of independent states combined together for certain specific objects. The component members of the union retain their individual sovereignty with separate political organisations. They are not amalgamated with the new state, but retain their independent character of a state. The confederation expresses its will in the form of resolutions framed by a quasi-diplomatic body consisting of representatives of the several states composing the federation. These resolutions have no binding effect upon individuals unless they are adopted by the respective governments as having forces of law. There is no common executive or judicial machinary to enforce their commands, and the members rely upon their mutual good faith for any joint action. The component members are free to withdraw from the confederation at their pleasure, and they can dissolve it whenever they like. The two notable modern examples of confederations were the United States of America from 1781 to 1789, and the German Confederation, 1815—1866.

3. *Federation*: Federalism creates a new state altogether by combining the smaller states into a large state. 'It is a ceation of composite state, a new creation of international law.' The smaller states preserve as much local autonomy as is consistent with the act of union, and surrender their sovereignty to the new state. As Woodraw Wilson has said, "it is a single and complete political personality among nations: it is not mere relationship existing between separate states, but in itself a state." As Dr. Garner has put it, "unlike a confederation, a federal union is not a mere league of independent states associated together for purposes mainly of common defence, but it is a union resulting from the merger of a number of political communities over the regulation of various matters common to all the component members." The act by which a federal union is established is not a mere compact, but a constitution.

It is not a band of states connected together by international agreement but a banded state The component members of federal u ions are n ot themselves states in the strict s-nse of the term By mer_ing their seperate existence to a larger state, they are in strict term mere political un ts non s vereign communities only retaining a degree of local autonomy as is consistent with the act of union

Freeman De Tocquev l e and others have mad i d stinc tion b tween *perfe t* a d *mperfe t* federal unions The *differ* ence is one mainly of degree In the former, the ce ntral government is supreme in ll external affairs and als control some u ternal affairs of general concern It does not contain any element of confederat sm In the latter, the component states have a limited power in the management of foreign affairs The acts of the central governmen are enforced by the individual state governments In fact in the imperfect system the remnants of confederatism survive to a certain extent The German Empire before the war was a good example of imperfect federal union.

Distinction between Federation and Confederation.

1 In a Federation, the separate government of the combining units are me ged into a single organization which is the state It is a case of comple e fusion In a Confederation, however, the constituent parts practically remain distinct and independent They retain their government with constitutional rights over certain affairs, and give up their sovereignty to the new state formed by their union for some obvious reasons It is a case of voluntary u nion only (i) to gain securi y and strength in foreign relations, (ii) to adjust judicial functions for the settle ment of disputes among the confederated states, and (iii) to have a common financial organ to determine the con tribution of the different sta es for common purposes

2 In a Federation, the central government enter normally into important direct relations with the citizens instead of merely acting on them through the governing organs of the part states In the United States, as for example, there is a federal legislature whose laws in certain matters are binding on the citizens as individuals, a federal judiciary to decide and see whether these laws have been obeyed or not, and a federal executive to enforce such laws. But in a Confederation, the

central government acts on individuals through legislatures, executives, and judicature of the part states.

3 In a Federal State, the part states cannot withdraw from the union which can only be dissolved by their mutual consent In such a state, the sovereignty of the component parts merges into the sovereignty of the totality, and the constituent parts cease to be national states. In a Federation, therefore, the unity is permanent and definite, and it is not dissoluble at the whim of one or several of its parts, but only by the united will of all But in a Confederation, the several states composing the unity are individually sovereign, and are mainly bound together by a sort of treaty relationship. Hence they can legally withdraw from the union at pleasure.

Federal State —A misnomer. We must examine how far the expression 'Federal State' can be strictly so called. With regard to physical elements, there can be no objection in using the term. But in applying the other factors of state, viz, organisation and unity, the expression becomes self contradictory.

(i) State is exclusive, that is, there cannot be two organisations of the state for the same population and within the same territory, whereas in a Federal state, the component parts have separate organisation of their own, quite independent of the Federal state.

(ii) Unity is one of the essential factors of a state, but in a Federal state, people generally desire *union* and do not desire unity. In a Federal state, the people wish to form for many purposes a single nation, but they do not wish to surrender their individual existence of a separate state. This sort of sentiment is a unique condition for the formation of a so called federal state as distinguished from state pure and simple The two feelings viz., the desire for nationality, and at the same time the determination to maintain the existence and independence of a separate state are to a certain extent inconsistent.

(iii) There results a new conception of sovereignty. The state is a sole sovereign authority and expresses its will in the form of laws In a state, sovereignty is indivisible There may be division of governmental powers, but the sovereignty itself is incapable of division; but in a Federal state, sovereignty lies neither in the federal government nor in the com-

monwealth but, as with the United States constitution in the sum total of all legal law making bodies *in the state federal* and commonwealth including those bodies that may legally amend the constitution

(*iv*) State as a sovereign authority formulates laws, and laws are same and equally binding on all people within the state whereas in a Federal state the authorities of the Union dictate laws in certain spheres which are no doubt the supreme law in the land, but in other spheres of action the constituent communities have their own system of laws, and they act with full autonomy of independent states

Distinction between Unitary State and Federal State In both the forms there are central and local governments But the local governments in the former are *mere convenient administrative units whereas in the* latter, they are constituent members of the federal union with almost co ordinate powers

III Part Sovereign States *According to the German* writers, there are some part sovereign states and they are the following —

1 *Members of Federal Unions* *Strictly speaking they* are not states as has been enumerated above

2 *Suzerain Communities* Portions of states by a process of gradual disruption (South African Republic under the suzerainty of Great Britain and Egypt theo etically under the suzerainty of Turkey but practically under England) or by the grace of the sovereign (the Irish Free state under England) acquire the powers of independent communities They have full internal autonomy and certain international capacity, but the paramount power control their foreign affairs. With such divided sovereignty they can properly be designated as states

3 *Protected States* There are some states which on account of their weakness placed under the protection of another powerful state They have international existence, but depend on the powers of another state *for* management of their important foreign relations (Japan over Korea in 1904)

IV. Neutralised States They are fully independent states recognised by the joint action of other states On account of their peculiar geographical position and smallness of resources, they are required to remain neutral and abstain themselves from engaging in hostilities against other states except as a matter of defence.

Questions

1. What are the various methods which have been suggested of classifying states [C. U 1914]

2 'I cannot find that very obvious classification which comes down to us from Aristotle and which is still assumed and accepted almost on all hands at all satisfactory' (Seeley) State and examine Aristotle's classification of the form of Government [C. U. 1915.]

3. Criticise Aristotle's classification of states in the light of modern history, and consider the question of a mixed state. [C. U Hon 1911.]

4. Criticise Aristotle's classification of states "It does not follow that the form of government in any given state is identical with the form of the state, though usually they are similar in form and spirit" Comment on this. [C. U. 1923]

5. Examine the Aristotle's classification of states 'The Aristotelian classification has been the cause of much confusion from a failure to discriminate between forms of state and forms of government' Explain [C. U. 1926.]

6. What are the ordinary characteristics of Theocratic States. [C. U 1910 1913]

7. Give examples of the various types of composite states. [C U Hon 1913.]

8. 'The difference between Federation and a Confederation arises wholly from differences in respect of the location of sovereignty in the grouping' Explpain. [C. U 1925]

9. Strictly speaking there can be no such thing as a 'Federal State.' Expound the proposition By what characteristic marks is a modern federal union differentiated from a confederation [C U. 1919]

10. "The Federal Union" says Dr. Garner, "is a sort of composite state a new creation of constitutional law, not a band of states connected together by international agreement." Amplify this. [C. U. 1924]

CHAPTER XVI

FORMS OF GOVERNMENT

Principle of Classification Following the same principle observed in the classification of States namely, the number of persons in whom the supreme powers is vested, the governments may be classified as—

1 Monarchical

2 Aristocratic

3 Democratic

The classification of governments as monarchical, aristocratic and democratic is not sound in as much as 'all governments are in a sense mixed' There is hardly any government which can claim purely to be of one type 'Many so-called monarchies are such only in name, and there is no fundamental difference in principle between aristocracies and democracies, the only distinction being one of degree" The classfication, therefore, does not rest on consistent scientific principle

—Prof—Burgess has tried to classify governments differentiating their fundamental characteristics on the basis of the following canons —

1 Identity or non identity of the state with its government

Primary Government

Representative Government

2 Nature and source of the official tenure

Hereditary Government

Elective Government

3 Relation of the legislature to the executive.

Cabinet Government

Presidential Government

4 Concentration or distribution of governmental power.

Unitary Government

Federal Government

Confederate Government.

5. Organisation and spirit of administrative service.
Bureaucratic Government.
Popular Government.

MONARCHY.

Monarchy. If the supreme governing power is vested in the hands of a single individual, however numerous his subordinates, the government is said to be monarchical. Duguit has defined monarchy as "that form of government in which the chief of the state is hereditary". But this definition is misleading History shows that there have been numerous examples of elective as well as hereditary monarchies.

The early Greek and German Kings traced their descent from God and claimed hereditary succession. The early Roman Kings were elective, and they were either nominated by his predecessor or elected by the senate for life only. The head of the Holy Roman Empire was chosen by a small college of electors though usually from the same family. In the Frankish Monarchy, the hereditary succession was again resorted to. With the dismemberment of the Frankish Monarchy into smaller hereditary states the Feudal Monarchy sprang up The struggle amongst several states led to the formation of Absolute Monarchy which was also hereditary. But throughout the Middle Ages, the ancient precedent of election was retained through the coronation service of the kings. The practice is still in vogue in Limited Monarchy of England. The English Monarchy is elective since Parliament claims the right of regulating the law of succession at its pleasure. The general practice is that the King is formally *elected* according to certain rules of *hereditary* succession.

Absolute Monarchy It was a reaction against the political evil of the Middle Ages which split up the states into several independent units. The kings had absolute power in the state and the entire state was identified with his personality. But such absolute monarchy could not survive, as the idea was revolting to the liberty of the people who were subjected to abject misery. Gradually the kings became 'passive slaves of ambitious ministers or greedy mistresses.' The self aggrandisement of the kings, ministers and the nobilities culminated in the French Revolution, which gave a

death blow to monarchism in France In England the chapter of Absolute Monarchy ended by the Revolution of 1688, which led the foundation of modern Constitutional Monarchy

Merits of Absolute Monarchy (i) It was a source of strength, vigour, energy of action unity of counsel promptness of decision and simplicity of organisation (ii) It was suitable to the needs of the early people who did not develop high political consciousness (iii) It helped to unite separate political units into a consolidated kingdom, and conflicting classes and races into nations Thus it paved the way for constitutional government

Objections to Absolute Monarchy (i) It was characterised absolute because people had no share in the government (ii) The government was administered in the interest of the monarch himself (iii) Administrative efficiency was a qualification but that was not the only test of a good government The government that did not rest on the affections of the people, and did not stimulate an interest in public affairs could not be said to be an ideal government

Constitutional Monarchy

Two types There is the German type, which may be called limited Constitutional Monarchy' and the English type, which may be distinguished as "English Parliamentary Government' Drawas sometimes called, "English Constitutional Monarchy" which became

German type The monarch is vested with supreme power (i) As demo not bound to follow the wishes of his ministers, and wishes into reins of government strictly in his own hands Acc (iii) It mak his view, the monarch governs as well as reigns He tion, which responsible for his acts Responsibility of mu cessful po *Objec* bility to punishment

sons (i heredit fitness fo sts bet Much power was vested in the hands of Want (ii) It led to many irreconcilable conDistrust war king and the majority of citizens. cracies such has been monarchship led to serious results The last monarchical regime from Germany

English Type by a strong republic Venetians respect he has no hand in administration, and in success they fa ess. The English King simply reigns,

The *ancient* aristocracy constituted the state, and it can be best defined as government by narrow minority possessing superior organisation, intelligence and wealth by which it was able to maintain its supremacy The *modern aristocracy constitutes the upper chamber in* the legislative assembly and it merely controls the state It represents superiority in general culture and political enlightment and inherited wealth, especially landed property Aristocracy in the modern sense, therefore may be defined as the combination of the above two elements in the society forming the upper chamber in legislative assembly It thus survives in part being associated with democracy or monarchy

Merits of Aristocracy According to Aristotle, the characteristic of aristocracy is virtue It emphasises quality rather than quantity The *essential principle of ancient aristocracy was to be found in the moral and intellectual superiority* of the ruling class Even now the aristocratic branch of the legislature is composed of men of high rank and culture. Montesquieu remarked, that moderation was its cardinal principle In fact aristocratic government is conservative "It avoids rash political experiments and advances only by cautious and measured step" The upper chamber in modern legislature is therefore, a revising chamber which checks all rashness of the popular chamber

Drawbacks of Aristocracy. (i) Ancient aristocracies had been very harsh and cruel towards the lower classes, which became intolerable because accompanied by contempt (ii) As democracy is too fickle and changeable, so aristocracy rushes into the opposite fault of excessive fixity and obstinacy. (iii) It makes heredity the fundamental principle of its institution, which is objectionable The qualities required for successful political life cannot be inherited at all times by all persons (iv) The possession of property is not a good test of fitness for government, especially if it be inherited wealth

Distinction between English and Ancient Aristocracies

1 *Re Growth* The ancient aristocracies (Spartan and Venetian) were based on the principle of exclusive hereditary succession of their ruling chiefs They were ruined because they failed to recruit their ruler from the distinguished men of

the city and the empire On the other hand, the English aristocracy survived, simply because it continually drew new vigour by recruiting itself from the lower classes. There was no restriction on intermarriage between the two classes, and a new blood was frequently brought into old families Nobility of genius was thus mixed up with the aristocracy of blood

2. *Re form of Government*: An ancient aristocracy constituted the state, whereas, the English aristocracy merely controlled the state The ancient aristocracy was a government by a narrow minority, and this narrow minority monopolised, not only office and powers but citizenship as well. There were no citizens but they. They were the state. In England the case was different There the franchise was not confined to the aristocrats : it was only controlled by them. Nor did the aristocrats of England consider themselves the whole of the state. They led the state, but did not constitute it.

DEMOCRACY.

Nature and Characteristics: Democracy has been defined as "the government of the people, by the people and for the people." The people may share in the government through a popular assembly of all the citizens—pure or direct democracy, through participation in the enactment of law by means of the so called initiative or referendum—a form of direct democracy, or through representatives chosen for the purpose—Indirect or representative democracy. It is thus a form of government in which the great mass of the adult population have a direct or indirect share.

Direct Democracy or Government by Assembly. This is only possible in small states, and among a people which has leisure to devote itself to the regular business of the state. In the Greek city states, the citizens only were allowed to take part in the deliberations of the senate The direct democracy was possible, because the manual work was entrusted to the slaves who formed the bulk of the population. It is a *government by assembly* which is not possible for a state with a higher civilization and wider relations. Direct democracy is practically aristocratic in relation to the entire mass of the population. Democracy, in the strict sense of the term, does not,

therefore, mean the direct rule of the masses, for that has never existed, but a form of government in which every citizen can have his say on all fundamental questions, and in which the will of the majority eventually prevails

Advantage The mass of the people are elevated by taking part in public affairs and they are compelled to look beyond the narrow limits of their occupation to the great laws of history and the collective lives of nations

Disadvantages (i) Fear and respect soon disappear as the feeling of unrestrained power gets the upperhand (ii) The populace gives the reins to its evil passions—pride, arbitrary caprice the love of frequent and useless change, and brutality (iii) Parties are found whose mutual hatered and mortal struggles ruin the common country (iv) The individuals may be both honest and prudent in himself, but as a member of the assembly, he is liable to be carried away by the passions of the crowd. (v) The love of equality was developed logically but one sidedly (vi) It could not tolerate individual greatness

Popular Government or Representative Democracy. A representative democracy is one in which the sovereignty of supreme controlling power of the state lies in a small body, composed of representatives of the people chosen by popular election J S Mill defined it, as that form of government in which "the whole people, or some numerous portion of them, exercises the governing power through deputies periodically elected by themselves" It is also called *Popular Government*

Republican Government Madision marks a difference between a republic and a democracy "In a democracy, the people meet and exercise the government in person, in a republic, they assemble and administer it by their representative agents" Representative democracy is a form of republican government

Responsible Government It is a form of govetnment in which the executive is responsible to the legislature, and dependent for its existence on the support of a majority in the legislature The cabinet system is a type of responsible government, but the presidental system is not All representative governments are not responsible governments.

Merits of Popular Government or Representative Democracy.

As regards its effect on the character of the public service, may be said, that it is the only form of government in which responsibility to the governed can be effectively enforced. It is subject to popular control, and the actual political authority exerted by the mass of citizens is determined by the extent of the electorate, and the control exercised by the electorate over the other organs of government.

As regards its influence upon the citizens themselves, (i) it serves as a training school for citizenship. "It elevates the masses of the people developing their faculties, stimulating interest among them in public affairs, and strengthening their patriotism by allowing them a share in the government."

(ii) Democracy has taught how to use liberty without abusing it. Law is better obeyed because there is a feeling that it is their own work. In the United States, every citizen looks upon a statute as a regulation made by himself for his own guidance as well as for that of others.

(iii) It rests upon the principle of equality. All citizens are guaranteed an equal amount of civil liberty, that is to say, in the eye of law, all are equal. "Democracy refuses to concede that some are born to rule, and others to obey. It recognises no privileged class."

(iv) It strengthens the love of country because the citizens feel the government to be their own.

(v) As the Government rests on the consent of the people, there is very little chance of revolution.

Weaknesses of Representative Democracy.

1. *Reaction upon the quality of the Government.* It emphasises quantity rather than quality. Government is a difficult art, and it requires special knowlege and intelligence in the governing body; while, democracy, as Lecky has remarked, 'is a government by the poorest, the most ignorant, the most incapable, who are necessarily the most numerous.'

2. *No connection between Democracy and Liberty.* Lecky maintains that "Democracy insures neither better government nor greater liberty; indeed, some of the strongest democratic tendencies are adverse to liberty." He cites the examples of

ancient Rome and modern France Leaving aside France, where the electoral system has not yet fully developed, his remark cannot be applied to modern countries like England and America where the civil liberty of the citizens is safe guarded by the constitution and the political liberty is secured through efficient party organization and electoral system

3 *Democracy produces inequality as well as equality* (i) In a democratic state all citizens are guaranteed equal amount of civil liberty without distinction of rich or poor, privileged or unprivileged class but political liberty is not apportioned to the numerical strength of the population The danger is that the ultimate interest of the whole community may be sacrificed to the class interest of the numerical majority Thus there is a despotism of the majority over the minority (ii) The pure idea of democracy is the government of the whole people equally represented But democracy as at present existing is the government of the whole people by a mere majority of the people exclusively represented The former is synonimous with the equality of citizens the latter, is a government *of privilege in favour of numerical majority*—an inevitable consequence of an inequality in the distribution of representation The minorities remain unrepresented (iii) The fundamental *principle of democracy* is 'equality, fraternity and liberty' as promulgated by Rousseau, but in its place, we find in the present democracies inequality of private fortune and *struggle of classes* (Capital vs. Labour)

4 According to De Tocqueville, Bluntschli and Maine, *democracy is unfavourable to the development of art, science and literature*

5 *'There is no security for steady and consistent policy*, either in foreign or domestic affairs, a risk of entire and violent change attends the administration, and the peace of the country is in perpetual and imminent danger" (Lord Brougham)

Ancient vs Modern Democracy

1 Ancient Democracies were 'immediate,' while the modern ones are 'mediate,' that is to say, representative

2 A state in which all citizens could participate in the Government must of necessity be small. The modern

representative state has no such limitation. It may cover any area however wide.

3. The ancient Democracy was a class government. It was nothing but modified and enlarged form of aristocracy. The slaves and freedmen had no franchise rights. In modern democratic state slavery and class subordination have no place Its suffrage is as wide as its qualified citizenship. It has not got any non-citizen class.

4. In ancient Democracy the people lived for the state; whereas the citizens of the modern democratic state live for themselves, and the state is for them.

5. The ancient state did not recognise personal rights; the modern state recognises no state rights which are independent of personal right.

6. The ancient states mixed up state with government; the modern states observe distinction between them. The state is a sovereign body with unlimited powers, while the government is the collective name for the agency or organisation through which the will of the state is formulated, expressed or realised.

The English Government—at once a monarchy, an aristocracy, and a democracy.

The English constitution presents all the characteristics of a monarchy, aristocracy and a democracy. At the head there is a hereditary Monarch who is the highest representative of the executive in all ceremonial occasions, and gives formal assent to the most important executive acts. In this way the form of government appears to be a monarchy. But the English Monarch does not govern but simple reigns. The actual government of the country is done by a committee, (the cabinet) the members of which are chosen from the house of the people's representatives, the House of Commons. In this sense it is democratic, that is, it is a *government by* the representatives of the people The other house, the House of Lords gives the constitution a form of aristocracy. The lords are not elected by the people. They sit on their own right as constituent members of the House of Lords, representing superiority in general culture, political enlightment and inherited wealth, especially landed property.

The British Government—more a 'Limited Democracy than a Limited Monarchy'

Limited Monarchy —There is a hereditary monarch who appoints the executive but has not the right to choose his ministers independently of Parliament or to impress his own policy on them The English Monarch does not govern but *simply reigns* The British Government therefore can hardly be called a limited monarchy Such form of government existed in Germany before the war The German constitutional Monarch not only reigned but governed Although he was irresponsible and constitutionally incompetent to perform any executive act without the co operation of the Imperial Chancellor, still he exercised independent judgment on the advice offered by his ministers and kept the reins of administration firmly in his own hands

Limited Democracy —The English constitution presents all the characteristics of a limited democracy It is democratic in the sense, that it is a government by the representatives of the people, but it is not a complete democracy in the strict sense of the term In a pure form of democracy, (i) the people have the right of directly or indirectly electing the members of the legislature and the head of the executive (ii) The judiciary is quite a separate and independent organ having powers co ordinate with other organs of the government (iii) The legislature consists of representatives of the people in both the Houses (cf America)

In England, neither Parliament nor the electorate have the power of directly or indirectly nominating the head of the executive There is a hereditary Monarch, who exercises the right of appointing the prime minister in conformity to the general wishes and inclinations manifested by Parliament The judiciary, in England is practically subordinated to the executive, and the judges cannot pronounce upon the validity of the acts of Parliament In England it is the lower House—the House of Commons, which consists of the representatives of the people The upper House comprises of hereditary lords who are not elected by the people, but they sit on their own right as constituent members of the House of Lords Although it is constantly recruited by the creation of peerages from all classes of successful men, still it is recruited by appointment and not by election Its

votes, therefore, cannot be controlled by the electorate. For all these differences and restrictions, the British Government may be more accurately called a 'limited democracy' than a 'republic, pure and simple, or a limited monarchy' as has been explained above.

Representative Government—a fusion of Aristocracy and Democracy

The minority which forms the executive rules according to the wishes of the legislative assembly. The system ascribes the right of sovereignty to the majority on a democratic principle, but entrusts its exercise to the minority, which possesses the requisite skill—the aristocrats in the art of government.

All representative governments have two chamber assemblies. There is a upper chamber constructed on a non-representative basis, and side by side, there is the lower house, which is the representative branch of legislature. The upper House may be called the aristocratic, and the lower House the democratic element of the modern representative government. As observed by Sidgwick, "the representative in its best form will realise to a substantial extent the principle of aristocracy in combination with the principle of democracy."

Questions.

1. 'The king can do no wroog'. Comment on the statement as applied to the British constitution. (C. U. 1916)

2. What do you conceive to be essential principle of Aristocracy, and what are its general characteristics? C U Hon 1913.)

3. Define Aristocracy. Should any class have a privileged position with regard to legislation? (C. U. 1917)

4. Discuss the advantages and disadvantages of Aristocratic form of government, and notice any points of contrast between the English and the ancient Aristocracies. (C. U 1909)

5. Popular Government is broadly distinguished into two divisions—(*a*) Direct, (*b*) Representative. Discuss the merits and demerits of these two forms of government. (C. U 1923.)

6. What do you understand by Democracy? What are the merits and demerits of Representative Democracy? (C. U. 1919.)

arrange for a meeting of the Great Council, and it was therefore quite useless when urgent action was needed. There grew up, therefore, not at a very early date some permanent body to advise the king. this was called the *Permanent Council* This was practically a standing committee of the Great Council out of which the *Privy Council* developed Its origin was due to the fact that the Permanent Council became unweildy It was too large a body to be suitable for the purpose of giving private advice to the king, and there grew up therefore the "inner circle," known as the private or Privy Council This body was to the Permanent Council, what the Permanent Council had been to the Great Council From the Privy Council, the *Cabinet Council* developed by the same processes The Privy Council became too large for the quick despatch of business and for secrecy Persons were appointed as Privy Councillors for an honorary distinction, whose opinions, perhaps, were not of supreme value in the state affairs. The king on most important occasions began to consult an inner circle of Councillor, composed of the leading ministers, and this body was called a *Cabinet Council*, because it could meet in a cabinet instead of the Council Chamber.

Development of the Cabinet:—The steps by which the Cabinet approached its present position, are thus summarised by a distinguished English writer (H. D. Traill, *Central Government*)

"(1) Anterior to the reign of Charles I. we find the Cabinet in the shape of a small informal, irregular *Concilia*, selected at the pleasure of the sovereign from the large body of the Privy Council but with no power to take any resolutions of state, or perform any act of government without the assent of the Privy Council.

(2) Then succeeds a second period, (Charles I. and Charles II.) during which this Council of advice obtains its distinctive title of Cabinet, but without acquiring any recognised status The Privy Council was not wholly displaced as the authoritative body of advisers of the Crown.

(3) A third period commences with the formation by William III of the first ministry approaching the modern type. The ministry represented, not several parties, as often before, but the party predominent in the state.

(4) Finally towards the close of the eighteenth century the political conception of the Cabinet as a body, took definite shape in our modern theory of the constitution It necessarily consisted (a) of members of the Legislature (b) of the same political views, and chosen from the party possessing a majority in the House of Commons, (c) prosecuting a concerted policy, (d) under a common responsibility to be signified by collective resignation in the event of parliamentary censure and (e) acknowledging a common subordination to one chief minister."

Nature of Cabinet Government Cabinet Government is that system in which the tenure of office of the real executive is dependent on the will of the Popular Chamber of the legislature The members of the Cabinet are strictly responsible to the Popular Chamber for their official conduct, and so long as they enjoy the confidence of the majority of its members, they continue to hold office and govern the country. But they resign in a body and vacate their seats as soon as the Popular Chamber manifests want of confidence in them, either by passing a vote of censure or refusing to pass any of their important measures They, however, have got powers to dissolve the Popular Chamber, and appeal to the electorate for a fresh election to have a new Chamber which might support their measures If the new Chamber support their measures they continue in office, or else, they resign and make room for a new set of ministers The British Cabinet is the ideal type of Cabinet Government

Special Features of Cabinet Government

1. *Fusion of Legislature and Executive* The Cabinet is a link which connects the legislature to the executive. As Bagehot remarked about British Cabinet "it is a combining committee—a *hyphen* which joins, a *buckle* which fastens, the legislative part of the state to the executive part of the state. In its origin it belongs to one, in its functions it belongs to the other" On one hand, the members are the heads of the great administrative departments of the country, and administer laws passed by the legislature, on the other hand, they are the persons who prepare, initiate and urge the adoption by Parliament of all the important legislative measures. The cabinet is thus the centre of the whole legislative and administrative system in the country, and within the system

there is a complete fusion of executive and legislative functions

Unity of Organisation · It is maintained by the Prime Minister who is the chief of the executive. Being the leader of the party in power he exercises considerable influence over the Cabinet and the House of Commons. He is, therefore, described by Lord Morley as "the key stone of the cabinet arch." Read, "The Prime Minister" of England, Chapter XX

3. *Ministerial Responsibility.* This is the chief characteristic of all forms of cabinet government. The solidarity of the British cabinet is retained by the system of joint responsibility of the minister to the House of Commons.

4. *Secret Sessions* In England no official minute is kept of cabinet meetings As Bagehot has remarked, "it is a committee wholly secret"

The Cabinet of England—an informal and anomalous committee · The cabinet has now become *de facto* though not *de jure*, the real and sole supreme consultative council and executive authority of the state Up to the present time, there is no legal foundation of it Its existence has never been recognised by any Act of Parliament It is not a committee of either House of Parliament, or a joint committee of the two Houses, for it is not appointed by and does not report its proceedings to either House Neither it is a commitee of the Privy Council, for it is not appointed by, and it does not report its proceedings to that body. In fact the cabinet does not report its proceedings at all. It has no secretary or clerks, keeps no record of its proceedings, and treats them as matters of secrecy, which it is a breach of confidence for any member of its body to divulge except by permission of its chief. The collective responsibility for the acts and defaults of individual members, and the special responsibility of the prime minister as their chief, have been developed by a process of slow growth and since 1906 the office of the Prime Minister only has been legally recognised.

The Cabinet of England—a unit as regards the sovereign, and unit as regards the legislature On the one hand, the members of the cabinet are the king's ministers and exercise their powers in the king's name, and it is by them and

not by Parliament that the government of the country is carried on On the other hand, they are the members of the legislature, liable at any moment to be called to account for their actions by the House to which they belong, and dependent for their tenure of office on the good will of the House of Commons It is, therefore as Bagehot has remarked, 'a committee of the legislative body selected to be the executive body"

The Cabinet of England is a board of control chosen by the legislature to rule the nation Parliamentary government does not mean government by Parliament The House of Commons does not rule it only elects the rulers The actual government is carried on by the cabinet ministers, whose actions are, however, criticised by Parliament by means of questions and interpellations The ministers are responsible to the House of Commons for the proper administration of the country The Parliament is more or less a supervising body and as Ilbert has put it, "*the British Parliament does not govern and is not intended to govern* A strong executive government tempered and controlled by constant, vigilant and representative criticism is the ideal at which parliamentary institutions aim'

Functions of the Cabinet Lowell writing about British Cabinet mentions two very important functions of the cabinet "*Individually*, as officials, they do the executive work of the state and administer departments; *collectively* they direct the general policy of the government, and this they do irrespective of their individual authority as official" The two functions are distinct, and it is the business of the cabinet to co ordinate and guide the political action of the different branches of the government in such a way as to create a consistent policy

Future of the English Cabinet Prof Dicey has remarked, 'it is a matter of curious speculation whether the English cabinet may not at this moment be undergoing a gradual and, as yet, scarcely noticed change of character, under which it may be transformed from a parliamentary into a non parliamentary executive The possibility of such a change is suggested by the increasing authority of the electorate It is at any rate conceivable that the time may come

when, though all the forms of the English constitution remain unchanged, an English Prime Minister will be truly elected by a *popular vote as is an American President.*"

British vs. French Cabinet.

1. In England, the recognised leader of the political party which has the majority in the House of Commons is sent for by the Crown, and entrusted with the formation of a ministry. He becomes the Prime Minister, and selects his colleagues from the chief leaders of his party Upon receiving an appointment as minister, a member has to resign his seat in the House and seek re-election as representative plus minister. The whole matter is formed, and the opposite party do not usually contest the seat a second time

In France, the ministers are commonly chosen from amongst the members of the Chamber by the President, but whether members or not, they have as ministers the right to attend all sessions of the Chambers, and to take a specially privileged part in debate. There is no process of re-election.

2. The English ministry is responsible to the House of Commons. If any vote of censure is passed upon them in that house, the ministers both inner and outer part have to resign in a body—such is the command of precedent and custom

In France, the ministers are also responsible to the Chamber of Deputies, but this responsibility is a matter of law and not simple of custom

3. The English cabinet rests on custom It has no legal status as an organ of the Government It is an informal body unknown to law, and its business is to bring about a co-operation among the different forces of the state without interfering each other's individual independence.

The French ministry act in a double capacity having distinct functions There are two separate bodies although they consist of the same persons As a *Council of Ministers*, they form an administrative body in charge of various departments of administration, and as *Cabinet of Ministers*, they are a political body responsible only to the Chamber of Deputies

4. In England, complete responsibility of the ministers to the legislature is combined with leadership of the ministers

in the legislature The ministers are themselves the recog nised leaders of the Parliament and they initiate all laws and re_ulate all legislation in Parliament In fact, they lead the Parliament

In France, the respons bility of the ministers to the Legis lature is as complete as that of England, but their leadership is normal They have got very little control over the Chambers On the other hand the multipl city of the parties, the committee system the direct questions and interpellations have weakened the leadership of the ministers They are not supported as in England by a sol d strength of a powerful and well organised party in the Chambers but have to depend on the ever changing comb nations of different republican groups Instead of leading the Chambers, they are more or less gu d d by the Chamber, which led Woodrow Wilson to remark *France is stagg-ring under the most burdensome* and i tolerable form of Government '

British Cabinet vs Executive Council of Govern ment of India The resemblance is apparent on account of the c ncer ed action of both the b dies, and because in b th the bodies each member is entrus ed with a specific department

The points of contrast are the following —(i) In the British Cabine , the ministers are taken from the dominent party in the Parl ament The executive councillors in Ind a are no dou t members of legislature, but they do not re present any party

(ii) The cabinet ministers are responsible to the House f Commons, and an adverse vote would make them resign n a body while the executive councillors are n t responsible o the Indian legislature, and they do not resi n on any dver e finding of their policy There is *no ministerial* esp nsibility in the council

(iii) In the cabinet the members resign in a body there is no s ch usage with the executive councillors

(iv) The Briti h cab net has no statut ry or legal status , while the Governor General's executive council is definitely the creat of the statutes

(v) In England, the solidarity of the cabinet is maintained

by the Prime Minister, who nominates the other ministers. In India, the Governor General, if he be taken to be his own ptemier is a new comer, while his colleagues are veterns in the service of India.

Presidential Government Dr Garner has defined it as that form of government in which "the executive is constitutionally independent of the legislature as regards his tenure and to a large extent also as regards his policies and acts." It is best suited to a state that has a federal government *e.g.*, the United States of America. France has unhappily mixed the presidential with cabinet form of government, and thereby weakened its constitution The presidential government in pure form is distinguished from cabinet government by its complete separation of legislative and executive functions The executive is politically irresponsible to the legislature and it cannot be removed from office, except on account of any serious crime for which it is liable to be impeached.

The so called American Cabinet It consists of the *ministers who are heads of the ten administrative departments* in the country As a body, they are known as *cabinet*, but they have no collegiate existence under the constitution. They are not members of the legislature and are not responsible to them They are, however, responsible to the President who is the real Executive They are appointed, controlled and dismissed by the President. In short, as Dr Garner puts it, "they are ministers of the executive, not of the legislature, administrative chiefs rather than parliamentary leaders" *An adverse vote in the legislature does* not affect them. They do not resign office on a vote of censure by the legislature for any administrative measure They do not by themselves prepare or introduce any measure in the legislature, but it is done through the agency of some members of the legislature who are in sympathy with their policies. They are not allowed to hold seats in the congress and not permitted to speak before it.

Comparative Merits and Demirits of the two Systems.

Merits of Cabinet Government:—(1) In the cabinet system, on account of close relation between the executive and legislature, it can secure any legislation required, but

presidential form of government the ministers can not go to the congress and ask or propose any legislation (ii) In England, on a vital question, the cabinet can compel legislation by threat of resignation and the threat of dissolution but neither of these can be urged in the presidential state In the United States, the President can veto laws he does not like, but when the two thirds of both houses are unanimous they can overrule the President, and make the laws without him (iii) In dangerous times, cabinet can choose a ruler for the occasion but under a presidential government it cannot be done Everything is rigid, specified and fixed by the constitution

Defects of Cabinet Government —(i) The cabinet system brings in new and untried persons to determine the general policy of administration In defence, Bagehot remarks, that change of ministers is essential to a parliamentary form of government, otherwise the system will be bureauctatic Even in the presidential form of government, with a change of the President number of officials are changed and posts are offered to principal supporters (i) The system keeps ministers indifferent A man cannot take interest in public functions when he knows that he may have to leave office in the middle for no fault of his His position is as "the last wave of party and politics brought the latter, the next may take him away" (iii) A sudden finding of ministry may easily cause a mischievous change of the entire experience and all

Merits of Presidential Government —(i) It gives the executive a full control over the administration without fastening any political responsibility to the legislature But the executive in the United States can be said to be controlled by the legislature when the grant of supplies is placed in the House of Representatives It is not so In case of deliberate refusal the President can raise money by issuing 'greenbacks' paper money) without consulting the congress at all (ii) The legislature is also free from any influence of the executive. The President has a veto power, but it can be overridden

Defects of Presidential Government —(i) The President and his ministers have no initiative in congress, little influence over congress, except what they can exert over individual members through the bestowal of patronage (ii) The congress

has imperfect power of control over the administrative departments inspite of its having unlimited power of enquiry (iii) "The constitution cannot be altered by any authorities within the constitution, but only by authorities without it. Every alteration of it, however urgent or trifling, must be sanctioned by a complicated proportion of states or legislatures" Mistake in the provisions of the constitution cannot, therefore, easily be remedied.——Read, Disadvantages of Federal Government, and Bryce's summary of 'Faults of Federal Government' at the end of this chapter

Bureaucratic Government. As Dr. Garner defines, it is a form of government, "which is composed of administrators especially trained for the public service, who enter the employ of the government only after a regular course of study and examination, and who serve usually during good behaviour and retire on pensions."

Merits—The chief merit of the bureaucratic government is that the officials are men of high skill and ability. They are especially trained in the art of government, and learn to observe a [illegible] discipline and *esprit de corps* among its own members. they have the work [illegible] secure [illegible] while time servants of the state, and are [illegible] they are not [illegible] him the up any other occupation. Such governments [illegible] to the [illegible] cumulates experience, and the officials are gain [illegible] who [illegible] practical knowledge in the actual conduct of affairs. [illegible] ed an [illegible] more efficient than a popular government. [illegible] ucratic government is well suited in a country where the people are unable to rule, or excluded from ruling themselves

Defects.—(i) The efficiency of government is not the sole test of a government "A good government should aim at education of the people in political affairs, stimulation of interest in public services, cultivation of feelings of patriotism and loyalty, but these cannot be accomplished by a bureaucratic government"

(ii) It is an inevitable defect that bureaucrats care more for routine than for results. Such government becomes very conservative, and is always guided by its set principles and precedents.

(iii) The bureaucrats do not care much for the public opinion. 'The trained officials hate the rude, untrained

public' and they form a profession by themselves by keeping aloof from the rest of the population They are naturally irresponsible to the people, and as Dr Garner remarks, 'they are very largely a government of men rather than of laws"

(iv) The bureaucracy boasts of skill and expert knowledge in the art of government but experience has shown that success depends on a due mixture of special and non special minds, the one attends to the means, and the other guards the end If it is left to itself it will overlook the end in the means, and the office will become technical, self absorbed and self multiplying

(v) The bureaucracy is characterised by unusual formalism, pomp and grandeur which result in excessive expenditure and unnecessary waste of public money As Bagehot has remarked, "not only does bureaucracy tend to under government in point of quality, it tends to over government, in point of quantity

The Government of India is Bureaucratic The Governor General is at the head of the administration and he is assisted, and more or less guided by the members of his executive council These members in their turn are heads of their respective departments They are all men of experience, and vested with powers of general control over the entire administration They are not responsible to the Indian Legislature, and are not affected by any adverse finding of their policy in the legislature It is an exclusive and absolute rule of the high officials *in conformity* with their *responsibility* to Parliament for peace, tranquility and good government of the country Naturally such government is bureaucratic, as the officials are not in direct sympathy with the hopes and aspirations of the people they govern It is very slow to move, and except *in the matters relating to their responsibility* to the Parliament, their duty is to their own conscience, and not to any constituents

Popular Government It is a government by persons who are occasionally drawn from the ranks of the people to take part in the discharge of some public function, local or general The principle of popular government" says Bagehot, 'is that the supreme power, the determining efficacy in matters political, resides in the people—not necessarily or commonly

tes the forces of the state among a number of co ordinate bodies independent of each other, and at the same time each originating in and controlled by the constitution *Secondly*, it involves a further division of authority within the state itself The powers and authorities assigned to the United States under the constitution are independently exercised by the president the congress and the judiciary and no department is allowed to trench upon the fields of the other The theory of separation of powers with minor modifications is rigidly observed in the United States

3 *Authority of Courts* The supremacy of the constitution is secured by the creation of the Supreme Court and the Federal Judiciary The court derives its existence from the constitution and stands therefore, on an equality with the president and the congress It is a Court of Appeal from decisions of the supreme courts of any state which turn up or interpret the articles of the constitution or acts of congress The Supreme Court, therefore becomes the ultimate arbiter of all matters affecting the constitution

The supremacy of the constitution,—the distribution of powers,— the authority of the judiciary, are *the essential features of a federal institution*

Conditions necessary for Federation According to Dicey, there are two conditions that favour the formation, of a federal state (i) "There must exist in the *first place* a body of countries so closely connected by locality, by history, by race, or the like, as to capable of bearing in the eyes of their inhabitants an impress of common nationality" (ii) A *second* condition is the existence of a very peculiar state of sentiment among the inhabitants of the allied countries to form for many purposes a single nation and yet not wishing to surrender the individual existence of each man's state. They must desire *union* and must not desire *unity*, and this desire to unite is no doubt the basis for formation of a federal state If, however, there be a desire for unity, it will be satisfied not under a federal but under an unitary constitution

According to Mill there are other conditions—(i) The *first* is that there should be sufficient amount of mutual sympathy among the population (ii) The *second* condition is that the separate states be not so powerful as to be able to rely

for protection against foreign encroachment on their individual strength (iii) A *third* condition is that there be not a very inequality of strength among the several contracting states.

According to Bluntschli, the coexistence of two kinds of states on the same territory is rendered possible by (i) a precise distinction between the powers of each and by making provisions for the peaceful settlements of disputes; and ii) by keeping the governments and the representative bodies as separate and as independent as possible The separation of powers and functions is most complete in the United States.

A federal system again can flourish only among communities imbubed with a legal spirit and trained to reverence law.

According to Gilchrist the conditions may be summarised as follows :—(i) Geographic contiguity (ii) community of language, culture, religion, interest, and historical associations, (iii) a sentiment of unity, (iv) equality of strength among the units, (v) political competence and (vi) general education.

Necessity for Written Constitution (i) The foundation of a federal state is a complicated contract between the several states which make up the confederacy. Hence it is necessary that the terms of the contract, the articles of the treaty, or in other words of the constitution, must be reduced in writing so as to remove the possibility of misunderstanding.

(ii) The distribution of powers is an essential feature of federalism The written constitution defines and outlines the divisions of functions and powers between the central authority and the organs of the local authority.

(iii) The declaration of right as enacted in the written constitution safeguards the civil and political rights of the people.

(iv) It lays down the only procedure by which the constitution can be changed As Lecky has said, "a written constitution secures property and contract, places difficulty in the way of organic changes, restricts the power of majorities and prevents out-bursts of mere temporry discontent and mere casual coalitions from overthrowing the main pillars of the state."

Component Members of Federal States, not States

The position of the states in American Union as well as in other countries having federal forms of government has been the subject of much discussion among the political philosophers Their views may be summarised as follows —

Non Sovereign Political Communities —The so-called states in the American union are not really states The supreme test of a state is its sovereignty Prior to the establishment of the Union, there might have been separate states, but by the act of the federation the component members of the union lost their individual sovereignty and merged themselves into a new and higher personality which is the state In strict law, the component parts are mere political units with large powers of local autonomy and political importance

Component Members as States —The German and some other writers treat the component parts as states According to them, the distinguishing characteristic of a state is not sovereignty, but its power to command and enforce obedience, and since individual members of a federal union possess such power, they may be properly designated as states

The argument is, however, fallacious for the following reasons —(i) Mere power in a local organisation to express a will and to enforce its commands is not the test of the state character If that be so all local provinces in unitary government and municipalities which lay down commands and enforce obedience can claim to be considered as states (ii) If the power to command and enforce obedience be the original, underived and inherent power in any political organisation, then it amounts to sovereignty, but the component parts of the union do not possess such power.

Part Sovereign States —The third view is to treat them as part-sovereign states The union is sovereign in respect to powers vested by the constitution, and the component parts are equally sovereign with respect to those matters intrusted to them

Strictly speaking, this subverts the very idea of sovereignty There cannot be two sovereign powers within a state The idea of dual sovereignty has arisen from a failure to distinguish between state and government. The state is a unit, and it is

incapable of division ; but the government can be divided and expressed through a variety of organs.

The component parts of the American Union are administrative districts with large powers of autonomy in government ; and in a certain sense they are *self-created political communities* having their own constitutions and political systems.

Powers, Rights and Obligations of the Component States

The United States —(*a*) The state and federal systems are so adjusted that each acts smoothly and effectively in its own sphere in perfect harmony and co-operation as parts of one and the same form of government. The powers conferred by the constitution on the United States are strictly definite and defined ; the powers left to the separate states are indefinite or undefined The constitution has delegated closely defined powers to the federal executive, legislature, and the judiciary and they all relate to matters of common concern and general interest The powers not delegated to the United States by the constitution, nor prohibited by it to the states are reserved to the states respectively or to the people The powers withheld from the states are very few e.g., inability to keep troops or ships of war in time of peace, to enter into agreement with another state or with a sovereign power, to engage in offensive war, to lay any duty or violate the obligations of contracts, to grant any title of nobility and a few others Compared with the vast range of powers and rights,—civil, political, social, economical and religious—left to states, these limitations are small enough Thus the supremacy of the federal constitution does not trench upon or displace the self-originated authority of the states in the immensely important spheres reserved to them.

(*b*) *Federal legislation is as much subject to the constitution* as an integral part of the law of the states. Federal law is administered both in the courts of the United States as well as in the state courts. An enactment, whether of the congress or of state legislatures, which is opposed to the constitution, is void and will be treated as such by the supreme court, the highest court of the land

(*c*) The federal government has no power to annul or disallow state legislation. The state constitutions do not owe

their existence to the federal government, nor do they recog nise its sanction The constitution of the United States guarantees to every state a republican government and it has the right to put down any state constitution which is not republican

(*d*) Changes in the constitution require for their enact ment either the consent of the two-thirds of the congress or the sanction of three fourths of the states

The Canadian Dominion —(*a*) The authority of the Dominion or Federal Government is indefinite or undefined, the authority of the States or Provinces is definite or defined within narrow limits From a federal point of view, this is the fundamental difference between the constitution of the dominion on the one hand, and the constitution of the United States on the other The United States constitution grants certain specified powers of the general government and reserves the rest to the states but the Dominion constitution, on the contrary, grants specified powers to the Provinces and reserves all others to the government of the Dominion. The Dominion Parliament can legislate on all matters not exclusively assigned to the Provincial legislatures The Provincial or State Legis- latures can legislate only on certain matters exclusively assigned to them The Congress (U S) on the other hand, can legislate only on certain definite matters assigned to it by the constitution , the States (U S) retain all powers exercised by legislation or otherwise not specifically taken away from them by the constitution

(*b*) The Legislature of the Federal or Dominion Parlia ment is as much subject to the constitution as the legislature of the Provinces Any Act passed by them which is inconsis tent with the constitution is void and will be treated as void by the courts.

(*c*) The Dominion government has authority to disallow the Act passed by a Provincial Legislature This disallowance may be exercised even in respect of provincial acts which are constitutional, i e, within the powers assigned to the Provincial legislatures under the constitution

(*d*) The constitution of the Dominion depends on an imperial statute , it can, therefore, except as provided by the statute itself, be changed only by an Act of the Imperial

Parliament The Parliament of the Dominion cannot as such, change any part of the Canadian constitution. But combining with the Provincial legislatures, it can modify the constitution for the purpose of producing uniformity of laws on the provinces of the Dominion.

Citizenship in the Federal States —See page 102-103.

Sovereignty in Federal States.—See page 56-57.

Advantages of Federal Government. Dr, Garner mentions three conspicuous merits of the federal system, namely, (i) It affords a means of uniting several political communities of diverse character with dissimilar institutions into a powerful state commonwealth without extinguishing their separate existence. (ii) 'It combines the advantages of national unity and power with those of local autonomy' (iii) 'Through the *right of local self government, the interest of* the people in public affairs is stimulated and preserved, and they are educated in their civic duties.'

Prof. Gettel enumerates the following other advantages of federal government —(i) In foreign affairs, a united front may be presented and a consistent policy pursued, and the internal affairs may be shaped in conformity with local customs and conditions. (ii) It makes democracy workable over large areas. (iii) It has prevented the rise of a despotic central government, and has conserved the political liberty of the people.

Dis advantages of Federal Government. There are corresponding dangers if the advantages of the federal system are misused. (i) In the conduct of foreign affairs, there are inherent weaknesses which are not found in unitary government. If the internal disputes or the principle of divided authority are carried into foreign relations, the national state will be embarassed.' (ii) In internal affairs, there is a division of power between co-ordinate authorities which produces variety of regulations in places of uniformity. (iii) There is no regular method of fixing responsibility for 'misfeasance and neglect' on any head. The executive and legislature are so related to each other, that one can shift its responsibility over the other. There is a constant friction amongst co-ordinate authorities which delay and sometimes checks carrying out important measures. (iv) In military affairs, federalism is a

failure, and even in the the federal states the unitary principle of military administration is followed

In modern states the growing importance and complexity of economic and industrial conditions demand uniformity of regulation Prof Leacock asserts that 'in proportion as economic progress results industrial integration federal government is bound to give away It is destined finally to be superceded by some form of really national and centralised government" He *therefore concludes* by saying that 'politically and on its external aspect it has proved itself strong but economically and in its internal aspect it is proving itself weak'

The weakness of federal government, observes Dicey, springs from two different cases *first*, the division of powers between the central government and the states, *second*, the distribution of powers among the different branches of the national government According to him, (i) "Federal government means weak government", (ii) It tends to produce conservatism. The constitution is rigid, and the difficulty of altering the constitution produces conservative sentiment, (iii) Federalism *(sic)*, means legalism It can 'flourish among communities imbued with a legal spirit and trained to reverence the law.'

Bryce sums up the *faults* of federal government as follows —

1. Weakness in the conduct of foreign affairs
2. Weakness in home government, that is to say, deficient authority over the component states and the federal citizens
3. Liability to diversion into groups and factions by the formation of separate combinations of the component states
5. Want of uniformity among the states in legislation and administration
6. Trouble, expense, and delay due to the complexity of a double system of legislation and administration.

Future of Federal Government—The opinion is is divided as regards the future of federal government. According to some writers, Freeman, Dicey, Leacock and others, it is merely a transition stage which will ultimately give way to unitary form Others, however, maintain that the gravity of the alleged faults has been grossly exaggerated by most writers, who have assumed on rather scanty grounds,

that federal governments are necessarily weak governments. History does not warrant so broad a proposition. They believe that present tendencies indicate a further development of the principle of federal union amongst states.

Questions.

1. Describe briefly the evolution of Cabinet Government. How does the English Ministry differ from that in France in normal times? what do you think will be the future of the English Cabinet? [C. U. 1909, 1912, 1914 and 1924.]

2. The Cabinet of England is a unit—a unit as regards the sovereign and unit as regards the legislature? Annotate. [C. U. 1921.]

3. The English House of Commons makes the ministry, but the ministry can unmake the House. Explain this, and contrast it with the relation in which the French ministry is held to the French Lower House. [C. U. 1925]

4. Describe the cabinet in the English system of Government. What is its relation (*a*) to the Crown, (*b*) to the Parliament. [C. U. 1928.]

5. Differentiate between the Cabinet Government of France and that of England. What are the constitutional powers and functions of the British and American cabinets. [C. U. 1927.]

6. Bring out clearly the merits and defects of a bureaucratic and a popular government. [C. U 1927.]

7. Illustrate the characteristics of a Federal Government by reference to the United States. [C. U. 1927]

8. What are the essential features of a federal institution? Examine this statement—'Federal government means weak government.' (Dicey). [C. U. 1915]

9 Describe the nature of Federal Government. What are the conditions that favour the formation of a federal union? [C. U. 1921, 1926]

10 Compare Canada, the United States and Germany as federations. [C. U. 1926]

11. "The communities of which Federal Unions are composed are not states in the strict sense of the term." Discuss. [C. U 1926.]

12. What is the position of the states in the America Union? What are their powers? State some of their rights and obligations as members of the Federal Union. [C U. 1928.]

13 What relation exists betwen the State Government and the Federal Government in America? [C. U. 1919.]

CHAPTER XVIII

ELECTORATE

Electoral Districts —In order to choose representatives for the Legislature it is necessary to subdivide the country into electoral districts There are two leading methods of distributing seats —

1 Single District Method

2 General Ticket Method

Single District Method According to this method, the whole country is divided into as many districts as there are representatives to be chosen, and one member is chosen from each

General Ticket Method *According to this method, the* whole country is subdivided into smaller number of areas, from each of which members are chosen on the same ticket The number alloted to any area is proportionate to the size of the district as compared with the total number of members to be chosen Thus the constituencies are not equal, the larger ones sending greater number of representatives The representation is based on a general party ticket uniformly adopted to all the constituencies

Merits and Demerits of each type The chief advantage of the single member District Method is its simplicity and convenience , the voters have the simple duty of casting a ballot for one representative The member chosen is a native of the district and knows its local needs It is a safe method to secure minority representation in the state If the representatives are chosen on general ticket system, the party in majority will elect all, and the minority none It is, therefore, a check on the inequality in representation which is complained of with regard to the General Ticket Method

The objections to the Single District Method are — (1) Men of inferior type are often elected from a particular district which may not possess a good statesman within its

jurisdiction "It narrows the range of choice," says Dr. Garner, "and often leads to the election of inferior men." (ii) The representatives chosen are apt to take keen interest about local interests rather than general interests. It is only the representatives who are elected on a General Ticket Method that can view public questions from a broad national standpoint (iii) It involves the disadvantage of breaking up for electoral purposes portions of communities, such as towns which have a coherence of economic and social life. (iv) It encourages the majority party in power to "gerrymander" the state, that is, to arrange the electorate districts in such a way as to give the majority party more power than its proportional share of representation

Mixed System Dr. Garner, therefore, concludes by saying, "that a combination of the general ticket and district methods by which a certain number of representatives would be chosen *according to each method possesses decisive advantages* over either by itself" In Great Britain, with the exception of large constituencies, the District Method is followed. In the states of the America Union and France, the representatives are chosen by the District Method with a few exceptions. In states where the system of proportional representation is adopted, e g. Italy, Belgium, Denmark, Norway, Sweden etc., the General Ticket Method is followed.

Universal Suffrage There are two distinct schools of thinkers with regard to the problem of extention of suffrage. According to one school, the right of suffrage is an inherent right of all the citizens in a state. It is a logical outcome of the doctrine, that government is based on the consent of the governed. This theory owes it origin to the preaching of Rousseau, that sovereignty belongs to the "general will."

The view of the opposite camp is that all the citizens of a state cannot have suffrage rights. Those only should vote who possess so much educational qualifications as to understand the questions on which they vote. Mill, therefore, argues that universal teaching must precede universal enfranchisement The voter should also have tax-paying qualification. "The voting of taxes," Mill remarks, "by those who do not themselves contribute, is a violation of the fundamental principle of free government; representation should be co-extensive with taxation" Besides Mill, Sidgwick Bluntschli,

Lecky, Sir Henry Maine and others belong to this school of thought

Excluded List. In actual practice a *via media* is adopted between the two extreme views (i) In every modern state the most ardent advocate of universal suffrage does not press for suffrage rights of minors, insane persons, idiots lunatics, criminals of disgraceful conduct etc. (ii) There are others who exclude paupers bankrupts, aliens and those who have no fixed residence (iii) Some exclude the holders of certain office, particularly those concerned with election management (iv) Some exclude women and men of inferior race In the United States, only the "whites" can acquire the right of citizenship, thus it excludes the Negroes and the Asiatic people (v) Others like France, Germany, Italy and partly England exclude soldiers in actual service (vi) Some debar persons who do not possess property, or do not pay direct taxes to the state. (vii) Others exclude the illeterate persons for their inability to exercise their privileges wisely (Italy)

Modern Tendency Inspite of unfavourable opinion against universal suffrage, the tendency of all democratic governments is towards complete enfranchisement of the masses In England and America, educational and property qualifications have almost been removed. The women have now got suffrage rights in some of the advanced states But "the extent to which the privilege may be wisely allowed," says Dr Garner, "depends upon the general intelligence of the population, the character of the office to be filled at the election, the political training of the people, and a variety of other circumstances"

Women Suffrage Restriction of the right of suffrage on the ground of sex is inconsistent with the principle of democratic government, which is based on the consent of the governed. If suffrage is the inherent right of the citizen, it should not be denied to the women Since the middle of the nineteenth century, the movement about women suffrage has gained footing, and the principle is gradually extended until recently it has spread through comparatively large area In England, English Colonies and in the United States, the women have secured suffrage rights equally with men in all elections with certain exceptions in some places.

Arguments in favour of Women Suffrage.

1. *Sex is not a proper test for determining the privilege.* Difference of sex is no ground for granting or withholding suffrage rights to a citizen who is otherwise qualified.

2. *Political enfranchisement should follow civil enfranchisement.* Women are as much a citizen of a state as men claim to be. There is no ground for debarring them from exercising political rights. When women are given all the civil rights as men in private law, when "they are capable of managing their own business affairs, of entering into contractual relations, of competing with men in professions and occupations of teaching them in the schools and colleges," they should be given equal rights with men in public law. There are notable examples in history to shew that women have made able rulers wherever they have occupied thrones. Elezabeth and Victoria in England, Maria Theresa in Austria, Catharine in Russia, and Rezia Begum in India.

3. *The privilege, a necessity for self-protection.* It is unwise and unjust to allow rights of women to be determined by men alone. Women are often subjected to harsh legislation by men, and it is therefore necessary to give them the franchise, so that they may defend themselves against any unjust class legislation Sidgwick is in favour of giving franchise to unmarried women and widows, who struggle for a livlihood in the general industrial competition without any special privilege or protection. He does not like to extend the franchise to wives, who have been economically protected by marriage.

4. *Women suffrage would introduce into public life a purifying element.* Women are considered to be morally superior to men, and their participation in public life would elevate the tone of public life and ensure better government. It is not proper to think that women as a class would make a bad use of suffrage.

Arguments against Female Suffrage.

1. *It would tend to destroy feminine qualities.* Women's proper sphere is the household, of which she is the guardian; and if she is disturbed in the political field, the young ones in the house will be neglected. To this argument it is answered,

that child bearing and rearing up children are not the only *mission of women*

2 *It would tend to introduce discord into the home*, because of the possibility of disagreement between husband and wife or mother and children but this remark may as well apply in cases of men if a family has got two votes If however, *the wife is gained over by the husband* her vote would be a mere duplication of the husband's, and it will not serve any useful purpose

3 *Military service is a condition of political privileges* Women are physically weak, and therefore incapable of participating *in military service* This argument does not hold good in countries where military service is voluntary Besides women by serving as nurses workers in Red Crosses and in other capacities render valuable service to the state during war

4 *The majority of women do not desire the suffrage* This is no reason why it would be denied to the minority, who desire it and would take advantage if it were given them J. S Mill supports it by saying that "it is a benefit to human beings to take off their fetters even if they do not desire to walk"

The conscientious opinion is, therefore, in favour of the women suffrage, and they have been able to secure suffrage *rights* in many modern states

Direct and Indirect Election The election is said to be *direct*, when the voters of the constituencies directly take part in electing their representatives Each individual voter records his vote, and the aggregate of such votes go to determine the result of the election The members of House of Commons in England are thus directly elected by the universal suffrage of the people, and so also the members of the Indian Legislatures are at present elected, though on the restricted suffrage of the people

The *advantages of direct voting* are, that (i) it stimulates interests in public affairs, and (ii) people have confidence on their representatives, as they are held responsible for their action Its *disadvantages* are, that (i) the masses are not competent to judge requisite qualification of a candidate, and

(ii) political excitement sometimes leads to election of an unworthy candidate.

The election is said to be *indirect*, when the representatives are not chosen directly from the people having suffrage rights, but the qualified voters choose certain number of electors, who in turn elect the members of the legislature. It is a system of double election. The members of the House of Representatives in Prussia are thus chosen in an indirect way.

The advantages of indirect election are that (i) it eliminates to some extent the evils of universal suffrage by confining the ultimate choice to a body of selected persons possessing a higher average of ability and necessarily a keener sense of responsibility. (ii) It tends to diminish the evils of party passion and struggle by confining the function of the electorate as a whole to the choice of those upon whom the ultimate responsibility must rest.

Its *disadvantages* are that (i) 'where the party system is well developed, the indirect scheme is likely to degenerate into a formality, since the intermediate electors will be chosen under party pledges to vote for particular candidates'. (ii) 'Indirect system tends to increase the evils of bribery, because the ultimate electoral body is much less numerous, and consequently more easily reached by corrupt influences than the whole mass of the voters." (iii) It diminishes interest in public affairs and retards political education of the people. (iv) The representatives have to vote not according to their independent judgment, but according to the instructions received from their constituencies.

Plural Voting. This is one of the methods of giving representation to classes and interests. By means of plural voting certain individuals receive more than one vote. In places where property is a qualification of suffrage, a voter is entitled to vote in every district in which he has a qualification. In most states this process of voting has been abolished and replaced by the principle of 'one man one vote'. Plural voting by itself becomes unworkable, if the election takes place on one day in widely scattered constituencies.

Weighted Voting. This is another method of plural voting. Those who have greater interests at stake or better qualified to vote receive special votes in addition to their

ordinary votes Thus rich men and the university graduates get additional votes The Belgium system of voting is the typical example of plural voting which takes into consideration property education, family relation, occupation or profession in allowing supplementary votes J S Mill was a strong advocate of the system of wighted voting on grounds of educational qualification

Criticism —(i) It is very difficult to find a just and practical standard of judgment (ii) Property qualification is accidental and does not meet with public approval It is against the spirit of democratic government and is being abolished everywhere (iii) The rich can afford to protect himself it is the poor who is in need of state protection (iv) Intellectual superiority or academic training is not always a mark of political capacity (v) Electoral inequalities will lead to discontent and agitation

Ballot System The ballot of each voter consists of a paper showing the names and descriptions of the candidates The voter having secretly marked his vote on the paper, places it in a closed box in the presence of the officer presiding at the polling station Afterwards the ballot boxes are opened, the votes given to each candidate are counted, and the candidate who gets the majority of votes is declared to be elected.

Disadvantages

1 The secret voting system by ballot prevents a candidate from buying off a voter for there is no guarantee that the man would really vote for him

2 It affords a free choice of election to the voters Under an open voting system the electors are, in many cases, laid away by the threats and persuasion of the priests and landlords

3 Under this system, the general election is conducted peacefully and methodically

Advantages

1 According to Mill the election should be open The representatives of the people should be publicly elected by the voters whose acts should be known to the public The secret voting by ballot vitiates the true spirit of the suffrage

2 The secret voting leads to encourage hypocrisy and

deceit. The voter promises one thing and does another thing; he says he would vote for somebody, whereas, really he gives his vote to another.

Corruption at Election. In all countries laws have been passed to check corruption at elections. In India, both for provincial and central legislature, the number of seats are so limited, the constituencies are so large and wide in area, the polling stations at such distances from the residence of the voters, the transports and communications are so undeveloped, that those who can afford to pay for the conveyance of voters secure an immense advantage over those who cannot. The payment of traveling allowances amount to corrupt practices under the law, and if proved against any candidate, he is punished, but generally the law is more honoured in its breach than in its observance. The only effective means of checking corrupton at elecion is to make it so wide, that it would be impossible for any one to corrupt his constituency. Universal suffrage is therefore the only remedy for such abuses. The United States has not yet been able to check the "spoils" system by which presidents are able to reward their party supporters with offices.

Control of Electorate over Government. In most law-making bodies representatives once chosen are permitted to exercise their own judgment on questions at issue. But there are several ways by which the electorate can control their representatives.

Indirect influence. 1. The length of the term of the elective offices affects the power of the electorate; hence frequent elections allow oppottunity to indicate approval or disapproval of a certain line of policy, and desire for re-election leads many representatives to follow the wishes of those on whom that re-election depends. Sidgwick is strongly against the method of shortening the duration of Parliament. According to him a representative possesses superior capacity, and hence should be allowed to exercise independent judgment. The duration of Parliament should neither be so long as to weaken the sense of responsibility in the person elected, nor should be so short as to give no opportunity to test the intellectual and moral qualification of the representatives.

2. Pledges need not be required of the candidates by

their constituents, but declarations of opinions and present intentions may reasonably be given and demanded, and are indeed necessary if the responsibility of the representative to his constituents is to be effectively maintained

3 The electorate in modern states exerts a powerful influence by means of political parties These associations through their nominations, conventions and committees determine the real policy of the government and give to the electorate a most effective way of making the government constantly and promptly responsible to its will

4 In American cities the electorate exercises a peculiar authority over elected officials By the system of "recall" a certain number of voters, by petition may demand a popular vote as to whether or not a certain elected official shall remain in office In this way the electorate may remove as well as choose, its representatives

5 The electorate exercises great influence over the government officials by means of public meetings, petitions, and the press

Direct Influence In some states the electorate takes a share in governing In Switzerland the people of each canton retain direct and positive control over the government Various methods are adopted to compel ordinary and constitutional amendments —

(i) *The Popular Veto* "In smaller cantons of Switzerland, on the publication of a measure passed by the council, a popular vote may be forced after about a month of the publication by the petition of some fifty citizens, and the measure may be made to stand or fail according to the decision of that vote"

(ii) *The Initiative* It is a system by which a certain number of voters may petition and compel the legislature to pass a statute of particular kind In the "formulative initiative the voters themselves draw up a bill and demand a vote upon it After the bill is considered by the legislature it is again submitted to the popular vote

(iii) *Plebiscite* In this system a certain question is submitted to the popular vote, which although may not have

any binding force, is intended as a future guide of the policy of the government.

(v) *Referendum.* The object of referendum is direct legislation or the making of law by means of the action of the people themselves. It has been favoured because of the growing distrust of representative legislatures in many democratic countries. There is an increasing tendency, therefore, to rely on the general will of the whole people as expressed in a direct vote

Referendum may be (*a*) optional if called by a certain number of voters, or (*b*) compulsory for all or certain kinds of laws. In the federal government of Switzerland the referendum is compulsory for an amendment of the constitution It is used in the several states of the United States for particular purposes. In the new German Republic when the two Houses of Legislature disagree on any bill, the President is empowered to refer the same to the decision of the people who are entitled to vote.

Arguments for Referendum. The referendum is proposed by some writer as a constituent method of adjusting differences between the two Houses of the legislature. It has been advocated by Dicey for England on the following grounds.

(i) On constitutional questions, a referendum would enable a plain and simple issue to be submitted to electorate, and would throw a clear and straightforward answer.

(ii) That it would give due weight to the wishes of the people, and it would arouse public interest in legislation.

(iii) That it places the nation above parties or factions and would destroy party and sectional legislation.

(iv) That it would permit the sense of the nation to be taken on a particular issue and would increase the national responsibility of the people.

Arguments against Referendum The arguments against referendum may be briefly summarised as follows:—(i) That it submits laws to the most ignorant classes. That a simple 'yes' or 'no' would decide little, and that more complicated from of references, tariff bill etc., would hopelessly confuse the illeterate voters (ii) Much depends upon the drafting of complicated statutes, and that it would not be easy to decide who

should draft them (iii) That the electors if they were aware that any bill was imperative, would accept a bad bill rather than none Thus it would render the executive omnipotent (iv) It would increase party influences, because the parties are better organised than the electors (v) It would encourage agitators (vi) The executive and legislature will lose their responsibility (vii) Constant referendums would become an intolerable nuisance (viii) Voters generally take little interest in such functions In every community a large portion of the citizens are of necessity too much absorbed in their own affairs (ix) Interest of the people are really safer in the hands of carefully chosen legislators than when submitted to the hazards of a popular vote

Importance of the Electorate The Electorate has become practically a fourth department of government In modern representative government, it constitutes the political sovereign, and lying behind the legal sovereign, it exerts its influence directly and indirectly over the entire system of government Dr Gettell has remarked, "it exercises *executive powers* in electing officers of administration, law making representatives and judges, it shares in *legislation* through the initiative and referendum, it takes part in *judicial decisions* by the means of jury service In some states it has a deciding voice in the formulation of the constitution, thus determining the fundamental organisation of the state"

Questions.

1 Mention and discuss briefly the various objections which from time to time have been taken to the extension of the franchise (C U 1909)

2 Describe the various ways in which the people of Switzerland exercise a direct part in legislation (C U 1910)

3 What are advantages and disadvantages of the Ballot (C U 1910)

4 What are the arguments for and against the grant of franchise to women (C U 1912)

5 Explain the object of a referendum Examine the objections that have been raised against its introduction into Great Britain (C U 1916)

ability representing the higher property and intellectual interests of the state

4. The members of the upper chamber ought to enjoy longer tenure than those of the other.

5. The members of one chamber are chosen in a different manner from the other, and by a differently constituted electorate.

Distribution of Representation Three methods have been followed in distributing legislative reptesentatives in the state They are the following —

1. *Political Units as basis* One of the methods is to distribute the representatives among the political divisions of the state without regard to their population The principle is generally followed in the composition of the upper chamber of the Federal States Except the German Empire, the Dominion of Canada, and France all other federal states maintain equality of representatives among the component parts.

2. *Property as basis* This is another method by which representatives are distributed among the political divisions of the state with some regard to the value of property in each. The political theory of "no taxation without representation" has influenced some of the European monarchies to take property into consideration in organising representation in the upper chambers At present, property as basis of representation in either chamber is discouraged by all democratic states

3 *Population as basis* The third method is that which takes into account the entire population irrespective of age colour, creed or sex. The principle is universally followed in apportionment of representation in lower chambers, and in some states, it forms the basis of representation in the upper chambers. (Single District system, and General Ticket system).

Principles governing the Composition of the Upper House · In modern states, the members are chosen according to three different principles —

1. *Hereditary Succession* The British House of Lords is largely based on the hereditary principle, and it is also

cabinets. France has many political parties, and it is very difficult to effect the same combination of functions in support of any measure. The Senate is generally outvoted in the National Assembly by the Chamber of Deputies. The French Senate is, therefore, the weakest of all the second chambers.

Pre-war Germany. The Bundesrath represented the sovereignties of the component parts of the Empire, and hence it occupied a higher position

Both the House had equal right in initiating legislation; but in actual practice, the Bundesrath prepated and otiginated all important bills, and after passing used to send them to the Reichstag for discussion, and they were resubmitted to the Bundesrath for finally being enacted into law after receiving the Emperor's signature over them

The Bundesrath had also wide executive powers. It drew up regulations for the administration, issued ordinances for the execution of laws. It appointed the judges of the Imperial Court, directors of the Imperial Bank and other officials. Its consent was necessary for declaration of war.

The judicial powers of the Bundesrath consisted in being the highest court of justice for deciding controversies between individual states, and disputes between Imperial Govetnment and state governments regarding the interpretation of any imperial statute, and it was also a court of appeal for the cases of denial of justice by the state governments to any individual.

Post-war Germany: The Reichrath is much less powerful than the old Bundesrath. It can initiate legislation, but in actual practice, initiation has passed into the hands of the government consisting of the Chancellor and his ministers, who are constitutionally made responsible to the Reichstag. The bills are therefore originated in Reichstag, but they must be finally decided by the Reichrath. The Reichrath has not got any absolute veto on legislation. In cases of disagreement between the two Houses, the Reichrath simply asks the President to refer the matter to the decision of the people—Referendum, and thus the deadlock is avoided. The executive duties of the old Bundesrath is, however, maintained by the Reichrath. It advises the government regarding the execution of federal laws.

The United States Of all the second chambers, it is said, the American Senate is the strongest Its standing committees have a great influence upon the action of the Senate and all the legislative actions of the Senate are done through them The legislative powers of the Senate is co ordinate with the lower House with one exception that the money bill must originate in the House of Representatives The Senate reserves the power of amending or rejecting th m which the British House of Lords or the French Senate cannot With regard to other bills if contested, the Senate usually though not invariably gets the better of the House It is smaller and therefore keeps its majority together its members are more experienced and it has the great advantage of being paramount When the two Houses disagree over any bill, the matter is settled by the influence of the Political Parties, or it is referred to the joint arbitration of three members of each House

It advises and checks the President in the exercise of its powers of appointing to office and concluding treaties Gettell remarks, 'the control of the United States over treaties and appointments its longer term and more select membership, and its historic traditions as representing the commonwealths have given it a prestige and power even greater than that of the House of Representatives'

English Legislature unrestricted, American Legislature doubly restricted

England The power and jurisdiction of British Parliament is so transcendent and absolute that it cannot be confined within any bound The Parliament has an unlimited legislative authority in the making or unmaking of laws concerning matters of all possible denominations—ecclesiastical, temporal, military, maritime, civil or criminal It can change and create afresh even the constitution of the kingdom and of parliament themselves, as was done by the Acts of Settlement, Acts of Union Septennial Act and other statutes To sum up the fact that Parliament can change any law whatsoever, Tocqueville supplies a convenient formula, that "Parliament is at once a legislative and a constituent assembly' Being a "legislative" assembly, it can make ordinary laws, being a "constituent" assembly, it can make laws which shift the basis of the consti

tution Flexibility, therefore, is the characteristic of the English constitution.

The Parliament is supreme and uncontrolled in the exercise of its legislative power also by the fact, that it is not fettered by any "written" constitution or by membership of a general community There is no distinction between constitutional and other laws. There does not exist any organ which can pronounce void any enactment passed by the British Parliament, and there is no power which under the English constitution can come into rivalry with the legislative sovereignty of Parliament

America ;—The American Legislature is fettered by a "written" constitution, which prescribes certain limits beyond which it cannot legislate The Legislature, as also the other organs, Executive and Judiciary of the state, are subordinate to and controlled by the constituuon. The laws of the legislative assembly are valid in America, if they conform to the conditions provided by the constitution, and invalid or unconstitutional, if they supercede any of the clauses of the constitution.

There exists a separate authority which determines the validity of all legislative enactments The Supreme Court is the highest tribunal of the land, and it can treat as void every legislative act—whether proceeding from the Congress or from state legislatures, which is inconsistent with the constitution of the United States. It is the ultimate arbiter of all matters affecting the constitution, and stands on an equality with the Congress and the Executive. In America, therefore, the legislature is doubly restricted by (i) written consitution, and (ii) the federal judiciary

Devices in use to expedite legislative procedure in Modern Democratic States.

1. *The Committee System :* It is not possible for any representative assembly at the present day to do all its work in full meeting. It has neither the time nor patience nor the knowlege required. In order to pass its verdict, it has got to collect informations. Modern assemblies have sought to accomplish these results mainly by committees of some kind.

In Parliamentary from of Government, the chief instrument

for the purpose is the informal joint committee of the House known as the cabinet But to expedite parliamentary business other committees are also required In England there are the committee of the whole the select committees the grand committees and the standing committees the object of all of which is to facilitate parliamentary business Similarly the representative assemblies of other countries have standing committees

2 *Closure and Guillotine* At times when great constitutional questions are in agitation, it sometimes becomes difficult to restrain the license of irresponsible members who are bent upon obstructing legislation by carrying the debate to an unusual length These measures have, therefore, been adopted by the legislative assemblies for cutting debate and reaching a vote as an absolute necessity Guillotine is a measure by which a certain time is fixed for the debate When the time expires, the debate automatically ceases

3 *Parliamentary Commissions* Much direct work of Parliament is saved by means of these commissions whose functions are sometimes executive, and sometimes of a mixed character combining several elements

4 *Questions* and *Petitions* are useful in their own ways, the development of *public meetings* of *newspapers* and of other vehicles for the manifestation of public opinion has greatly smoothed the ways of parliamentary business

Legislative Process in British Parliament When a member proposes to introduce a bill in the House of Commons he makes his motion at the appointed time, and except in connection with bills of great importance, the first motion called "the first reading" passes with little or no debate and without a division The next step is "second reading," and the methods of opposition are somewhat technical After the second reading of a bill, it formally goes to the Committee of the Whole unless a motion may be made to refer it to a Select Committee, but this happens only when it is thought expedient that its provisions should be examined in detail When a bill has been reported from the Committee of the Whole with amendments, it is again considered by the House in detail upon what is known as "the report stage". If no amendment has been made, there is no report stage, and

"the third reading" is next taken up, which is more or less a technical affair, and after passing of which the bill is carried to the Lords.

A bill brought from the Lords proceeds at once to the second reading in the Commons, and a bill brought from the Commons proceeds in the same way to the second reading in the Lords. The bill thus brought in the House of Lords is referred to the standing committee of the Lord, and after consideration by the Standing Committee the bill passes to the report stage if amended, and if unamended goes direct to the third reading. Then it proceeds direct to the king for signature, and once signed by the king it becomes law.

Financial Legislation in British Parliament.

A 'Money bill' passes through various stages before it becomes an act of the British Parliament. In England a money bill is either an Appropriation bill or a Finance bill. By an *Appropriation Act* the House of Commons authorises expenditure for the year, and by the *Finance Act*, it authorises the imposition of taxes as may be required to meet the expenditure.

The House of Commons cannot vote money for any purpose except at the demand and upon the responsibility of ministers of the Crown. This demand for annual supply is embodied every year in the king's speech on opening Parliament at the beginning of each session. As soon as the address in reply to the king's speech has been agreed to, the House of Commons sets up two committees, the committee of Supply and the committee of Ways and Means. These committees are the committees of the whole House with the Speaker's chair vacant, and under the presidency of a chairman who sits at the table.

The business of the committee of the Supply is to vote such grants of money as appear to be required. As a rule the estimates are passed as they are presented. The committee of the Ways and Means has two functions: (i) It has to pass resolutions authorising the imposition of any taxes which may be required, and (ii) it has to authorise cheques to be drawn for the expenditure already agreed to by the committee of the Supply.

The resolutions thus passed by the committee of the Supply ratified by the necessary resolutions of the committee of the Ways and Means are reported to and confirmed by the House sitting formally with the Speaker in the chair and then finally confirmed by the Act of Parliament One such Act called the *Consolidated Fund Act* is passed in the beginning of the session and similar Acts are passed during the course of the session All these Acts anticipate the final sanction given towards the end of the session by the *Annual Appropriation Act* Every Consolidated Fund Act and every Appropriation Act contains a provision empowering the treasury to borrow money by short loans in the form of Treasury Bills The Chancellor of the Exchequer annually makes his budget statement in the committee of the Ways and Means If the estimated revenue is more than sufficient to meet estimated expenditure, he is in a position to remit or curtail taxes But if it is not sufficient, he proposes in the form of resolution, imposition of new taxes His resolutions are discussed in the committee of the Ways and Means which can reject or amend any resolution, but cannot increase the amount proposed to be raised by taxes. When the resolutions have been passed by the committee, and the money bill is confirmed by the House of Commons, it is certified by the Speaker as a 'Money Bill and is sent up to the House of Lords at least one month before the end of the session If the Lords withhold their assent to a money bill for more than one month after the bill has reached them, the bill is presented for the king's assent, and on that assent being given, it becomes law without the consent of the Lords (Parliament Act, 1911) When the money bill becomes law it is known as the *Finance Act* of the year.

Instructed vs Uninstructed Representation The doctrine of representation in modern national states raises an important question, whether representative should be subject to instruction or no That is to say whether they should be bound by the instructions of their constituents like those of delegates or ambassadors to a congress or whether they should exercise their own judgment according to their convictions, independent of instructions received from their constituencies

In attempting to answer this question a distinction should be drawn between representatives elected *directly* by the

(v) Representatives of central legislatures are not chosen for local but general interests Local bodies cannot instruct on matters concerning general interests

(vi) The work of legislation cannot proceed smoothly if the representatives have to take instruction from their respective constituencies on every occasion It would take long time to secure instructions and perhapes the necessity for particular measure would pass away before instructions could be received The doctrine of instruction says Lieber is "unwarranted, *inconsistent* and unconstitutional

Instructions to Representatives indirectly elected —(i) The senators in the federal states composing the upper chamber are generally chosen by state legislatures or other political organisations They are like ambassadors sent by the part states to represent them in the federal assembly Hence the state legislatures have the right to instruct them as to how they should vote on particular measures

(ii) The state legislatures are themselves *organised* political bodies, and *therefore*, *competent* to formulate instructions

Practical difficulties (i) In the German Bundesrath the constitution provided for the right of instructions In the United States, the constitution is silent in regard to the matter and hence in some cases, the instructions are obeyed and in others disregarded There is no method of enforcing such instructions if the senators choose to disregard them, for the senatorial term is fixed by the constitution and no right of recall is recognised by the constitution Since the Amendment Act 1913, the members of the Senate are elected by direct election and are no longer representatives of state governments

(ii) The senators are *not* really delegates or ambassadors of the state They are *not paid* by the state nor can be recalled by them at their pleasure

(iii) The obligation of a senator to the constitution is higher than his duties to obey the body which chooses him, and, therefore, he cannot vote for any measure, even instructed by his constituency, if he believes it to be unconstitutional.

(iii) Senators should not be subject to instructions as new facts are brought out in the course of debate, which the state legislators cannot foresee.

(iv) No state legislature can claim to instruct a senator to vote in a particular way in an impeachment trial.

The Modern Representative. The modern representative is not a delegate or an agent of a particular class or interest, but he is a representative of the entire people composing the state. He is not merely a mouthpiece to deliver the mandates of his constituency, but a representative of the state with full liberty of thought and action. He is a member of the body which is responsible for the interest of the country at large, and though he should try to respect the wishes and views of his constituents, and follow the actions of his political party, still he must not surrender his right of independent judgment. As Lord Brougham has remarked, "He represents the people of the whole community, exercises his judgment upon all measures, receives freely the communications of his constituents, is not bound by their instructions, though liable to be dismissed by not being re-elected in case the difference of opinion between him and them is irreconcilable and important."

The essence of representation is that power of the people should be delegated into the hands of their representatives, and they should be allowed to perform their duties unhampered by any kind of restriction. It is no representation at all if the constituencies control the actions or themselves act through their representatives. According to Edmund Burke, a modern representative owed the constituency both industry and judgment, and if he sacrificed these to the opinion of the constituent, he betrayed rather than served him. When addressing to the electors of Bristol in 1780, he very forcibly defended his action of disregarding their instructions by saying "The Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates. But Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the

whole You choose a member, indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament "

The new democratic states, however, do not view the representatives in the same light as mentioned above The present tendency is to consider the representative as an agent of the people whose function it is to express the popular will even against his conscience and judgment.

Qualifications and Disqualifications of the Representative All states prescribe certain qualifications for the office of representative —

Citizenship —In all states aliens are excluded from membership in the legislative body, on the ground that they do not owe permanent allegiance to the state, and hence have no permanent interest in its welfare, and may introduce foreign influence into the councils

Age.—In all states certain age restriction has been maintained, as legislative duties require some knowledge and experience Great Britain requires twenty five for the lower chamber, thirty and sometimes forty years for membership in the upper chamber

Residence.—In the United States, the representatives of the congress is required by the constitution to be a resident of the state, but he need not be a resident of the district

England does not require any residence qualification The greatest defect of the residence qualification is that sometimes men of inferior type are returned, because there may be many parts in the country where there are no good statesmen It also shuts out doors of the congress against men of marked ability, who cannot be taken in for not being residents of the states

Property —With the growth of democratic feeling, property qualification has disappeared almost everywhere Property qualification is no test for legislative fitness

In most states holders of administrative offices are disqualified from occupying seats in the legislature In the United States, where the doctrine of separation of powers is rigidly observed, the disqualification is practically absolute In Great Britain, the members of the cabinet are also members

of the legislature, but constitution requires them to be re-elected after their appointment as cabinet ministers.

In some states the ecclesiastical persons are debarred from sitting in the legislature In England, the clergies of the Roman Catholic Church and those of the established Church are not allowed to be elected to the House of Commons.

Minority Representation. Various schemes have been suggested for minority representation in the state. A distinction has been drawn between two types of minority representation—

1. System of Proportional Representation.
2. Special Forms of Minority Representation.

1. Proportional Representation. The advocates of Proportional Representation claim that the minority party should be represented in proportion to their voting strength. "In any really equal democracy," says Mill, "every or any section would be represented, not disproportionately but proportionately. A majority of the electors would always have majority of the representatives; but a minority of the electors would always have a minority of the representatives."

The present system of government is therefore characterised as un-democratic on account of its inequality in the system of representation. Multitude of electors have no representation, or very little representatioo, simply because they are in minority in their constituencies.

Criticism.—The system of proportioral representation of minority has become popular, and is supposed to be a remedy for all the ills of society, but able writers such as Sidgwick and others have condemned the very plinciple of minority representation on the following grounds :—

(i) It reduces efficiency of legislature by introducing members who represent one or more sets of interests or opinions.

(ii) It goes against the principle of representative government by ignoring the right of the minorities to convert themselves into majorities through their power of persuation.'

(iii) The system of proportional representation is very complex, and there are many practical *difficulties* (See *Criticism of Hare Scheme*.) In England and the United States no regard is at all paid to the principle of proportionality, in Germany, not much in France, considerable

The following are some of the schemes of Proportional Representation which give representation in proportion to members every shade of minority party in the constituencies —

1. Hare's Scheme of Transferable Vote
2. The List System

Hare's Scheme of Transferable Vote This system is associated with the names of Hare and Andræ, because it was proposed by an Englishman, named Thomas Hare, and introduced in Denmark by Andræ

In this system the representatives are elected by general ticket, that is to say, the whole country is taken as one constituency The electors mention their first, second, third choice etc, in the voting paper A certain quota is fixed as a minimum number of votes which each candidate must secure to be elected This quota is found out by dividing the number of votes cast by the number of representatives to be chosen. In counting the ballots only the first choices are considered, and those candidates who have secured the requisite quota are at once declared to be elected The remaining ballots of the members of first choice are then counted, and these votes are transferred in favour of members of second choice, and so on down the list until the necessary number of persons have been declared elected

This method is also advocated by J S. Mill in his work on "Representative Government," and is strongly supported by Lord Courtney, Lecky and other English Publicists There have been several forms and modifications of the Hare's scheme, but principle in all of them is the same This system has recently been adopted in Ireland for the election of municipal councils

Advantages (1) It would secure a representation in proportion to members of every division of the electoral body,

and thus majority and minority alike would be represented. (ii) Every member of the House would be the representative of a unanimous constituency (iii) Persons of national reputation would be selected, and the intellectual standard of the House of Commons would be raised.

Objections to Hare's Scheme: (i) The plan would be unworkable in large electoral districts. (ii) The local character of the representation would be lost. (iii) The people of England will never consent to such a system. (iv) It would be impossible to guard against fraud in the operation of the central office where all the ballots will be counted. (v) Undue power will be given to knots, cliques, and sectarian combinations etc (vi) The system would admit of being worked for party purposes. (vii) The method adopted for selecting the particular votes that are to count for any candidate who has votes in excess of the required quota is not satisfactory. (viii) This is the extreme form of general ticket system

The List System According to this plan, candidates are grouped in lists, and each elector votes for one or other of the candidates giving as many votes as there are places to be filled up, but not cumulating them on any one candidate. The requisite quota is found out by dividing the total vote cast by the number of places to be filled. The total vote cast by each party is then divided separately by the electoral quotient, and the result is the number of representatives to which each party is entitled. Suppose altogether 4000 votes have been cast, and there are 200 seats to be filled up. The electoral quotient is 20. Out of 4000 votes cast, 2000 are Conservative, 1000 Liberal, and 1000 Labour votes. Then dividing the number of votes of each party by the electoral quotient we see that the Conservatives are entitled to 100, the Liberals 50 and the Labour 50 representatives This system has been adopted in Norway and Sweden, Swiss Cantons and in Belgium.

Advantages: (i) The plan is simple, and adoptible to large constituencies

(ii) It is economical and secures proportional representation.

(iii) It recognises the party system, and it secures 'the

fairest and most accurate distribution of seats among the various parties or groups within the state'

Special Forms of Minority Representation

1 *The District System* The modern method of choosing representatives by districts affords chance of minority representation than would the case if all representatives were chosen on a general ticket

The defect is that by the process of *Gerry-mandering*, 'the authority having the right to redistribute these districts often arranges them in such a way as to make it difficult for the minority to control any of them or by combining the minority voters in a few districts, give them fewer representatives than their strength really deserves'

2 *The Limited Vote Plan* According this method, the voters of any constituency are allowed to vote for a smaller number of candidates than there are places to be filled For example, if three representatives are to be elected from any constituency, voters are allowed to vote for two candidates only, so that the minority party may be certain of electing one of three

Criticism (i) It does not allow proportional representation, but limited representation to the minority party.

(ii) It can be used only in those constituencies which send at least three or more than three members

(iii) It secures representation of large minorities only, but makes no provision for a third party

3 *The Cumulative Method* The elector could cast as many votes as there are representatives to be elected according to his choice, and he could cumulate his votes on one or more of the candidates In this way the minority party could concentrate its votes on one canditae who had a fair chance of election

Criticism —It involves a waste of votes The popular candidate secures more votes than are necessary for his election, at the cost of other candidates who might fail of election

(ii) It so happens that minority party succeeds in electing two out of three representatives in any constituency It does not therefore allow proportional representation

Representation of Classes and Interests.

Principle —A minority which is given special representation owing to its weak and backward state can thus safeguard its own interests by making its views known in conocil through the members especially acquainted with their particnlar concerns.

Grounds for —(i) According to some practical politicians, communal representation is an inevitable and even a healthy stage in the development of a non-political people. (ii) They also maintain that it evokes and applies the principle of democracy over the widest range possible, and appeals to the interests which are strongest. Duguit maintains, that the expression of the general will can only be effectually secured through the representation of the various groups whose opinions go to make up the general will (Garner) (iii) That it affords oportunities to secure vested interests of the class. "All the great forces of the national life," Duguit says, "ought to be represented, industry, property, commerce, manufacturing professions etc" As there is proportional representation for political parties, similarly there should be representation of groups differentiated for social or economic purposes. (Garner) (iv) That this is the best system of representation for the people of India, who are so divided by race, religion and castes as are unable to consider the interests of any but their own section. It is desirable, therefore, to devise elaborate system of class or religious electorates into which all possible interests will be definitely fitted. (v) It is also argued, that the assembly which votes the taxes, either central or local, should represent all shades of opinion.

Grounds against: (i) It perpetnates class divisions. Division by creeds and classes means the creation of political camps organised against each other, and this teaches men to think as partisans and not as citizens. Thus it hinders the growth of citizen spirit in a country. (ii) It is against the very principle of self government, since each group represented in the legislature would possess a fraction of the sovereignty. (iii) It stereotypes existing relations. The minority which is given special representation owing to its weak and backward state is thereby encouraged to settle down into a

feeling of satisfied security There is no incentive to educate and qualify itself to regain its lost power (iv) It is opposed to the teaching of history The history of self government among the nations who developed the principle of representation and spread it through the world is decisively against the admission by the state of any divided allegiance (v) The modern representative is a state representative, not the representative of any person corporation, or group and his duty is a state duty (iv) The system of class representation of interest would tend to lower the character of the legislature, since each member would in some measure be the exclusive representative of particular interests or opinions, rather than the representative of the interest of the state as a whole (Garner)

Communal Representation in India The germ of communal representation was sown by the Act of 1909, and it definitely came into existence by the statutory provisions of Government India Act, 1919 It provides for the separate electorates of the Hindus, Mahomedans, European Community, Land holder's Association, Chambers of Commerce and other bodies. The whole country has been subdivided into groups of classes and interests, and the representatives elected are more concerned with the interest of the communities to which they belong than with general welfare of the people as a whole.

The advocates of communal representation argue that an elaborate system of class or religious electorates is desirable in India where the people are divided amongst themselves into various races, religions and creed This argument is not sound In many of the European states, Canada and in South Africa there are acute differences of race and creed, but none of the communities demand for separate electorate The only argument that can be said in favour of communal representation in India is that the country is still poor in political education, and so long the representatives chosen by the people have not learnt to discuss questions from national point of view, so long religion is not scrupulously excluded from the field of politics, and so long the people have not acquired confidence on the elected representative whoever he might be, the communities in minority would always clamour for separate electorate

The objections of class legislation enumerated in the preceding section apply equally in cases of communal representation as obtains at present in India.

The Indian statesmen and publicists have given their best thoughts over the subject, but they have not yet come to any successful and unanimous solution of the problem. Some remedies have been suggested as a temporary measure, till higher intelligence and political education of the people lead themselves to think otherwise.

Ideal Representative System.

1. In order to have an ideal representative system the electorate should be co extensive with all self-supporting sane adults of the community. Exclusion of some may be justified on the ground that they cannot properly discharge the legislative duties etc, or they would make a dangerously bad use of the franchise. (Excluded list and Women Suffrage p 167.)

2. Minority should be adequately represented in the legislative assembly, and some form of proportional representation may be adopted to secure this object. But there are practical difficulties on the way. (Read Minority Representation, p 194.)

3. The modern opinion is against representation of classes and interests (Read Representation of Classes and Interests, p. 198).

4. The election of representative should be *direct*, and the method of choice should be combination of the general ticket and district methods. (Read Mixed System, pp. 166.)

5. The representatives should try to conform to the wishes of their constituents, but they must not sacrifice their independent judgments. The electors should not *instruct* the representatives to act in a particular way (Read, The Modern Representative, p. 192. Uninstructed Voting, p. 189.)

6. The property qualification in the electors should be abolished in a perfect representative system.

7. Similarly there should be no religious qualification for voting as in the constitution of several Limited States of American Commonwealth, which provide that no person shall vote who do not believe in God.

8. The term of the representative should neither be too long or too short If the tenure be very long, the responsibility of the representative to his constituents cannnot be enforced ; and if it be too short, the admmistration will suffer on account of rash innovations in domestic legislation and public policy

9 The distribution of seats in the upper house should be made with but little regard to the census of population

10 The legislature should be bi-cameral with the substantial parity of powers in the two houses, except in dealing with the budget , and that in control of finances the popular house should get the upper hand. (Read, 'Bi cameral System' p. 177 and 'Comparative power of two Houses p 183)

Questions.

1. What are the defects of the present representative system in England and what remedies have been proposed ?
(C U 1912, 1914)

2. What are the advantages of a bi cameral system of legislature. (C. U. 1914.)

3. Describe an ideal representative system for a modern state. (C U. 1917)

4 What devices are now in use or can be suggested to expedite parliamentary business in Democratic countries
(C, U 1917).

5. Give a general outline of the legislative functions of government. (C U. 1919)

6. What are the duties of a member of the British House of Commons. (C. U. 1921, 1922)

7. Explain the principle underlying the "representation of classes and interests." On what grounds has this doctrine been attacked by political theorists and defended by practical politicians. (C. U. 1923).

8. A second chamber is almost indispensable in a Federalism such as the United States is. Why ? (C. U. 1

9 Indicate briefly the powers of the House of C and the House of Lords with reference to money bills
(C. U

10 Discuss the question whether the representation should be 'instructed' or 'uninstructed'. (C. U. 1925).

11 Of all the second chambers you have studied, the French Senate is probably the weakest, and the American Senate the strongest. Discuss. (C. U. 1925.)

12. State the provisions of the Parliament Act, 1911. What has been the effect of this Act on the position of the House of Lords. (C. U. 1926).

13. Discuss the various stages through which a Money Bill passes before it becomes an Act of the British Parliament. (C U. 1922.)

CHAPTER XX.

EXECUTIVE.

Meaning of the term. In a broad sense, it includes the whole government organisation which is concerned with the execution of the will of the state. In a narrower sense, it refers to the supreme authority, whether an individual or body which controls the subordinate agencies. (The President of the federal states, the Swiss Federal Council etc.)

Unity of Organisation. The function of the executive is to carry out the will of the state as expressed by the legislature. The chief requisites to discharge its function are, "promptness of decision, singleness of purpose, energy of action, and sometimes secrecy of procedure."

Single headed Executive: For the above requisites the political writers and statesmen have been practically unanimous in favour of a single executive. Unity or organisation is essential to the strength of the executive, and it is not possible in any other type.

Plural Executive: The single-executive principle is criticised on the ground, that it frequently encroaches upon the sphere of the legislature and upon the liberties of the

people in general, and that it is a relic of absolutism, and hence is inconsistent with the spirit of a republican government

A plural executive is likely to possess a higher degree of ability and wisdom than can be found in any single person In formulation of constructive policies requiring mature judgment, keen insight, and extensive knowledge in public affairs, two heads or a body of persons are better than a single individual The Swiss Federal Council is the modern example of a plural executive

'A Single Executive has the advantage of unity, decision, promptness and secrecy, and a Plural Executive presents arbitrariness, oppression and encroachment upon the rule of law' In modern states the two principles seem to have been combined If, however, the executive power is simply delegated among subordinate authorities, it does not necessarily mean division of authority In every government the functions of the executive are classified under several departments, but these departments are not independent of one another They are under the guidance of one leading chief whose duty it is to bring unity and efficiency into government Neither there can be any objection if the executive head is provided with an advisory council, for the ultimate decision in most cases rests upon the executive But when the responsibility is vested on a single head, and he is saddled with an executive council which directly participates with him in executive control (cabinet in England), the theory of unity in executive power is practically destroyed or at the best divided between him and the council whose advice and control he is made subject In England, however, the peculiar position of the Prime minister in relation to his colleagues, and their joint responsibility to the House of Commons maintain the unity of organisation of the cabinet In the United States, the President is the most powerful official So the modern principle is to vest the executive power in a single executive chief, who is provided with an advisory or an executive council which instead of imparing its unity, increases the efficiency and add strength to the entire body.

The Term of the Executive The term of the executive should be long enough to secure constructive policy

to prosecute the war or to *bring it to a successful conclusion.* The military power is vested in all states in the hands of a single person, for as Dr. Garner remarks, "in the military oragani-sation of the state, dualism is out of place."

4. *Judicial or Pardoning Power.*—It is generally accepted by all states that the executive shall have the right of pardon or clemency. It also grants amnesty to the political offenders in times of internal disturbance and insurrection.

The pardoning power is vested in the executive for the following reasons.—(i) The executive exercises the right of pardon in considerations of humanity and sound public policy. (ii) In some instances, it becomes necessary to correct judicial errors of condemnation of innocent persons (iii) The executive is justified in using this power, as "one man" says Hamilton, "appears to be a more eligible dispenser of the mercy of government than a body of men."

Special Judicial power of the French Executive. In France the powers of the President are the powers of his ministers. It is a traditional prerogative of the French executive, that in its power to execute and administer the laws, it can not only interpret the laws, but may also supplement them to meet circumstances and cover cases which the legislature did not foresee or provide for. It cannot violate the principle of statutory law, but it is not restrained by its detail. The executive has the power to shape the laws to the cases that arise and the legality of administrative action is tested, when challenged, not by ordinary courts of law, but by special administrative courts. (Read 'Administrative courts, Chapter XXI).

5. *Legislative Power.*—"These include the assembling adjourning or dissolving of the legislature, the right directly or indirectly to initiate legislation, frequently some form of veto power, and duty of promulgating the laws."

Distinction between 'Executive' and Administrative Powers.—Executive powers are those which go to determine the question of general policy both external and internal in a state, and deals with major acts of the state. They include "such matters as summoning and opening of the legislative chambers, the conduct of foreign relations, the disposition of military forces, the exercise of the right of pardon, etc." These powers are sometimes, called 'Political' powers.

The administrative powers are those which have to do with carrying out the details of a policy laid down by the heads of departments, the execution of the laws and the administration of the government

In France the Cabinet of Ministers is exclusively a political body, which is responsible to the Chamber of Deputies The Council of Ministers is purely an administrative body which exercises general supervision over the execution of the laws and the administration of the government The personnel of both the bodies is the same, although they have separate functions

In England, individually, as officials, the members of the Cabinet are administrative heads of the executive departments and collectively, they direct the general policy of the government

Povision for Support of Executive Power. In all states the powers which the executive will have to exercise are conferred by the constitution and the laws In Republics these powers are expressly conferred by the constitution In Hereditary Executives there is a large residuary power which goes under the name of the "Royal prerogative" These powers are based on common law of the countries They do not rest on any statutory authority The modern tendency has been to restrict these powers as far as practicable

Method of Choice of the Executive Five methods have been adopted in choosing the Executive —

1 *The Hereditary Principle* In monarchical states of Europe the titular or nominal head of the executive is hereditary

Merits of the Hereditary Principle See Chap XIX

2 *Direct Popular Election* The method is mainly confined to Republics At present some of the national executives of the South American Republics are elected on this principle The president of the United States is practically elected by the direct method

The *advantages* of the direct method are that it stimulates interest in public affairs, and the elected president commands the confidence and support of the entire nation The corresponding *disadvantages* are that (1) it produces a violent commo-

tion withen the state at the time of election, (ii) the masses are incompetent to judge intelligently of the qualifications of a candidate for so important an office, and (iii) the people are influenced and misled by demagogues

3. *Indirect Election*: It is followed in choosing the national executives of the United States, the Argentine Republic and others. The *advantages* of this method are that it does not disturb public traoquility, and leads to an intelligent choice. The greatest *disadvantage* of this method is that the electors are influenced by the parties, and they are compelled to vote for particular candidates of their party. The indirect scheme thus becomes in reality a system of direct election by the political parties.

4. *Election by Legislature.* This is followed in Switzerland and France. It is objectionable on the ground that (i) it violates the principle of separation of powers by making the executive a subordinate branch of the legislature, and that *(ii) it interferes with the law-making function* of the legislature. It is supported on the ground, that the members of the legislature have full knowledge of public affairs, and are familiar with the leading statesmen of the country and are, therefore, best qualified to choose the fit man for the post.

5. *Nomination.* This method is adopted in choosing subordinate officials. The Governor General of India, Canada, Australia, etc, are selected by the British Government. Different offices require different qualifications, and the departmenental heads are best judges to choose their subordinate officials according to requirements of their offices.

The Prime Minister of England The solidarity of the English cabinet is maintained by the Prime Minister, who is appointed by the Crown from the party in majority in the House of Commons The king's selection is practically limited to one who is a recognised leader of the majority party, and he must be a person capable of leading the political party to which he belongs This selection is again indicated by the *public opinion of the country. The other ministers are appointed* on the recommendation of this chief, and are generally chosen from the party in which the Prime Minister belongs. *The Ministers*, however, work independently in their respective departments, and when required, hold joint deleberations,

and the Prime Minister exercises great influence over these deliberations Although all the members of the cabinet are *jointly and severally* liable for their actions to the Parliament, the Prime Minister as chief of the cabinet is principally responsible to Parliament for the acts of other ministers, and even for their words It is necessary for him to control all the departments of administration, and preserve harmony in the cabinet. As Woodrow Wilson has remarked, "consistency in policy and vigour in administration on the part of the cabinet are obtained by its organisation, under the authority of the Prime Minister ' He is, therefore, rightly remarked by Lord Morley, as "the key *stone of the cabinet arch* "

The President of the United States

Position of the President "The executive power," says the constitution, "shall be vested in a President of the United States of America " He is the real executive, and not a figure head like the Presidents of France and Germany He is chosen by indirect election through an electoral college The president must be a natural born citizen of the United States, a resident of the United States for fourteen years, and at least thirty five years old He holds office for four years There is a Vice President who is also chosen in the same manner with the President He is the President's substitute, and ordinarily has no part in the executive function The President chooses his Ministers with the approval of the Senate for the various departments of the Government, and they are absolutely subordinate to him He can remove any of them at his own initiative

Powers and Functions Although standing outside of legislature, he can intervene in all matters of legislation A bill is to be signed by the President before it becomes law The President can veto any bill, but when two thirds of both the Houses of Legislature *are unanimous*, the bill automatically becomes law without the consent of the President Thus the President has a *qualified veto* on legislation He sends "messages" from time to time to the Congress for its information and guidance He can convene extraordinary sessions of both the Houses or any of them, and in cases of disagreement between them, can adjourn them to such time as he thinks proper

In administration, the President wields an enormous power for both home and foreign matters. He takes care that the laws of the United States are faithfully carried. He nominates with the advice and consent of the Senate, ambassadors, judges of the courts of the United States, and all other officers required by law. These offices are bestowed upon those who helped him at the time of his election (Spoils System). He has the power to grant reprieves and pardons. He is to regulate the foreign relations of the country, and he recieves ambassadors and other foreign ministers. He is the commander-in-chief of the army and navy of the United States. The Congress declares war, but the President makes treaties with the consent of two-thirds of the Senate. As a commander-in-chief of the army he can raise money by issuing 'greenbacks' (paper money), and thus can continue any war against the wishes of the Senate, if he is backed by the nation or his party.

The President of the French Republic.

Position. The French President is elected by the joint ballot of the Chambers, and has apparently large powers. As Woodrow Wilson has said, "he is the titular head of the executive of France." The ministers forming his council, are no doubt appointed by him, but at the same time, they are not his representatives. He is not the president of the council, although the council sits in his presence. The ministers are not responsible to him, but to the Chamber of Deputies for their conduct of office All his acts must be approved by the ministers, and his decrees are not valid unless countersigned by the minister whose department is affected. All these facts make his authority nominal. The constitutional position of the French President, therefore, is not so strong as it ought to have been in a Presidential form of government.

Powers and Functions · Although his position is not very dignified, still he has great power of controlling the administration. He appoints and removes all officers of the public service. He has *suspensive veto* on legislation, that is, he can simply demand a consideration of any measure by the Houses. He can adjourn the Chambers for any period not exceeding one month, and with the consent of the Senate, can dissolve the Chamber of Deputies before the expiration of the period (five months) of the regular session.

He is the nominal chief head of the executive departments His functions practically cease with the appointment of the ministers, who are responsible to the Legislature for their actions in their respective departments

The President of the New German Republic.

Position of the President —The German President is kept outside the politics like that of France The actual government is carried on by the Chancellor and Ministers who are constitutionally made responsible to the Reichstag

Powers and Functions The President represents the Federations in all international relations, and concludes all treaties with foreign powers He is the commander in chief of the Federal army With due notice to the Reichstag for its approval, he can compel any part state to obey the federal laws and can adopt any measure to restore peace and order in the country with the help of armed forces He exercises the powers of pardon and reprieve on behalf of the administration.

In legislative matters he has very little power His duty is to promulgate the federal laws in the official Gazette Whenever the two Houses disagree on any bill, the President is called upon to refer the same to the decision of the people with suffrage rights

Ministerial Responsibility It means the resposibility of ministers to Parliament or the liability of ministers to lose their offices if they cannot retain the confidence of the House to which they are responsible

In *France*, the cabinet of ministers are responsible to the Chamber of Deputies, and they resign office as soon as their actions are not supported by the majority of the House. Their responsibility is a matter of law and not simply of custom

In *England*, an act has no legal effect if it is not done with the assent of, or through some minister or ministers who will be held responsible for it They also vacate office if they cannot retain the confidence of the majority of the House of Commons The ministers are legally responsible for all their acts, and they cannot plead that they acted simply under orders of the Crown. If the acts are illegal, they can be hauled up be-

fore an ordinary court of law, civil or criminal. Impeachment is another remedy, but it has gone out of date, and thought to be obsolete. Dicey has remaked, "behind parliamentary responsibility lies legal liability, and the acts of the ministers, no less than the acts of subordinate officials are made subject to the rule of law."

In Germany, the misnisters are appointed by the President on the recommendation of the Federal Chancellor. They are collectively responsible for the general policy of the Government, and individually responsible for their respective departments to the Reichstag, and must therefore resign if its confidence is withdrawn by a resolution.

Relation between Executive and Legislature.

The fundamental principle of the eighteenth century political science was the security for freedom given by 'Separation of Powers'—legislative, executive and judicial. Montesquieu in France and Blackstone in England maintained, that the three functions of the government should be performed by three bodies of persons, neither body having a controlling power over either of the others. But an examination of the existing governments shows the utter barrenness of the theory. Any department of the government cannot be exclusively conducted with its own functions.

The relation of the legislature to the executive may be viewed from the standpoint, *first*, of the legislative powers of the executive and its control over the legislature; *second*, of the administrative powers of the legislature and its control over the executive.

Executive control over Legislature. The executive participates in legislative functions by (i) summoning, adjourning and prorouging its sessions, and in countries having cabinet forms of government, by dissolving the lower chamber and ordering new elections; (ii) furnishing informations regarding the needs of the country at the beginning of the sessions or from time to time during the course of sessions, through speeches from the throne in monarchical countries, and the "messages" of the executive in republican states; (iii) directly initiating important legislative projects and money bills in parliamentary legislatures, and indirectly influencing legislation in the non-

parliamentary states through the "administrative members," who are spokesmen for the executive in the legislature, (iv) controlling the legislature through its veto power in disapproving the acts of the legislature, and lastly, by (v) promulgating and publishing the acts of the legislature.

Legislative control over Executive. Similarly the legislature controls the executive by (i) compelling the parliamentary executive to resign in a body when a vote of want of confidence is passed, (ii) censuring the executive for their official conduct, (iii) refusing to grant supplies, and lastly, (iv) by punishing the officers for any serious crime.

Mutual check So there are mutual checks and balances between the two departments, and in order to have a smooth working of government, it is desirable that there should be a harmonious relation between the two Each department should therefore work in a spirit of toleration for the other In parliamentary forms of government, the cabinet system by itself, and in the presidential forms of government, the influence of political parties maintain the cordial relation between the two branches of the government.

Questions

1. *The executive of any government must possess, (a) unity* of organisation, (*b*) duration, (*c*) adequate provision for its support, (*d*) *competent powers.* Discuss the necessity of each Specify the powers which are necessarily exercised by the executive *C. U 1923.*

2 Give a general outline of the executive functions of Government Are there any general principles underlying the exercise of those functions *C U 1919, 1922, 1925.*

3 Classify after Dr Garner, the executive powers of a government Distinguish between executive and administrative powers Give reasons for vesting the power of pardon in the executive *C U 1924*

4 'Prime Minister of Great Britain is the keystone of the cabinet arch' Amplify *C U 1921.*

5 What constitute the executive in England Describe its relation to the legislature Is the power of the king to appoint the Prime Minister subject to limitations *C. U 1920*

6 Write a note on the constitutional position of the President of the French Republic, his power and his functions *C U 1913.*

usual division is civil and criminal. In the United States, the courts are not divided into sections. (*iii*) In the federal states there are two sets of courts, one for federal government, and the other for state governments. In the the United States, there are federal courts and state courts. In Germany the federal principle is not applied to the jodiciary. It has got only one system of courts.

Judicial Organisation in Modern Governments.

England; Nominally the House of Lords is the highest tribunal in the country. Its judicial functions are now exercised by the Lord Chancellor and the four "Law Lords" who form the court of last resort. Below this there is the supreme court of Justice which is divided into two parts—the Court of Appeal and the High Court of Justice. An appeal lies from the latter to the former The High Court of Justice is further divided into (*i*) a Chancery division, presided over by the Lord Chancellor, (*ii*) a King's Bench Division presided over by the Lord Chief Justice, and (*iii*) a Probate, Divorce and Admiralty Division, presided over by one of its judges. The Lord Chancellor who is a member of the cabinet and the Lord Chief Justice are appointed by the Crown on the recommendation of the Prime Minister. Judges of these courts go round the country and try cases in circuit courts. Beneath these courts there are the country courts and the justices of the peace. All crimioal cases are tried with the help of a jury.

France: There are two sets of courts: (*a*) Ordinary Courts for the trial of private individuals of which the Cessation Court at Paris is the final authority, and (*b*) the Administrative Courts for the trial of public officials, of which the Council of State is the court of the last resort. Below these there are many subordinate courts. In cases of conflict of jurisdiction between these two courts, it is determined by another Court called the Court of Conflicts Judges are nominally appointed by the President but really by the Minister of Justice.

Germany The Supreme Court of Judicature is the highest tribunal which decides all controversial matters regarding the constitution The Federal High Court hears appeals from the state courts. Administrative Courts and a Court of Conflict also form a part of the system. The subordinate courts of

original jurisdiction are the Sheriffi's Courts, District Courts, Superior District Courts etc Serious criminal cases are tried with the help of jury

The United States The judicial system in the United States is comprised of two distinct series of courts the federal and the commonwealth The commonwealth governments have their own set of courts The national government have the federal courts which are distributed throughout the length and breadth of the country They consist of a Supreme Court, Circuit Courts of Appeal Circuit Courts of original jurisdiction and number of District Courts The final appellate authority is the Supreme Court The federal courts exercise jurisdiction over disputes between two commonwealths or between their citizens, and all cases arising under the constitution, laws and treaties of the United States

The commonwealth courts have their own system of organisation, laws and procedure Burgess and other writers have criticised that there is no uniformity of laws in the commonwealth constitutions There are no doubt variations, but in essentials there is remarkable similarity This is due to the basis of English common law upon which the legal system of each of the commonwealths rest

Both the national and state courts are in a sense integral parts of the same governmental system Rights arising under the national constitution may be enforced by the state courts, but they do not like to exercise jurisdiction In many cases the federal and commonwealth courts have concurrent jurisdiction, and the suitors have the option of choosing the court they like The Supreme Court decides all disputed jurisdictions

The Supreme Court of America The Supreme Court of the United States is given power to say whether other branches of the Government have exceeded their power (*u*) It has the right to declare null and void an act of the Legislature of the national government (ii) It has also got the right to disregard the action of the Executive when he is beyond his power (iv) It has the further right to say when the states have exceeded their sovereign power (v) It decides all disputed jurisdiction These are the

influence of any arbitrary power or direction of the Government. (ii) It professes equality in the eye of law. All classes are equally subjected to the ordinary law courts. The law courts do not recognise any privileged official class, who might be exempted from the duty of obedience to the law which governs other citizens. In England there is nothing really corresponding to the administrative law of France. (iii) It also means that the law of the constitution is the result of judicial decisions determining the rights of private persons in particular cases brought before courts. In other words, the constitution is the result of the ordinary law of England.

Merits (i) Individual freedom is thoroughly protected in England against government than in any other European country. (ii) Even martial law has been subjected to the supervision of the courts. (iii) The judicial power has been extended, and according to Dicey, the courts rather than government represent the dignity of the Crown.

Questions.

1. What do you understand by the term 'independence of the judiciary'? Why is it necessary that the judiciary should be independent? What should be their functions and qualifications? *C. U 1921.*

2 Compare the position of the judicature in England, France and the United States, explaining the constitutional powers of the judges and the way in which they are appointed. *C. U. 1918.*

3 Examine the part which the Supreme Court plays in the American constitution. *C. U. 1919.*

4. What are the functions and jurisdiction of the English House of Lords as the highest court of justice. *C. U. 1925.*

5. Summarise the mutual relations between the executive, the legislative and the judicial bodies in England and the United States. *C. U. 1922.*

6 What are the functions and jurisdictions of the French Administrative Courts? Discuss the advantages of, and objections to these courts. *C. U. 1924*

7. The rule of Supremacy of Law has been said to form one of the main characteristics of the English constitution. Explain this with reference to 'Administrative Law.' *C. U. 1915.*

CHAPTER XXII

PARTY GOVERNMENT

Party Government Political parties are never found except in Democracies As Gettell has put it, "A political party consists of a group of citizens more or less organised who act as a political unit, and who by the use of their voting power, aim to control the government and carry out their general policies" The Government in which such Political Parties exist, and where the machinery of government is more or less influenced by any such organisation is called the Party Government The basic principle upon which Party Government exists is the organisation in which there is a community of interest and an agreement of principle

The influence of parties on Representative Government was not at first anticipated It was unknown to such writers as Hamilton and Madison who regarded them as factions against which precautions should be taken Even Story in 1833 considered it to be the duty of Parliament to disregard the use of party J S Mill in his 'Representative Government" hardly contemplated dual party as a normal feature of representative institutions It was Burke who for the first time anticipated the value of Party Government

Function of Political Parties The chief aim of a party is to control the government in such a way as to make its own policy prevail For this purpose, the political parties seek to capture as many seats in the legislature as could be secured at the general election The Party which is highly organised to manage elections returns the largest number of members to the legislature and by its collective voting strength carries out its own policy The first function of the Party is, therefore, to maintain its organisation and unity It must keep the party together, and prevent it from wasting its strength by dissensions and schisms It must always try to increase its number by enlisting new voters or drawing into the fold other voters by arousing their sympathy through the press and literature It must give the voters some knowledge of the political issues it intends to decide, and must form the virtue of its leaders and the crimes of its

opponents It must also select candidates for election, and back them with all the forces of its organisation at the time of election.

Merits of Party Government.

1. It is not good that people should hold all shades of opinion; minor differences must be subordinated to general agreement, otherwise no work is possible. Hence the existence of parties is necessary to have large groupings of opinion, and such groupings are not artificial as they reflect the collective opinion.

2. The dual division of parties leads to the stability of a government, especially where the executive is dismissible (as in England) at any time by a Parliamentary majority.

3. It consists in the regular, systematic and sober criticism of governmental measures to which the dual party system leads. Under this system, the leaders of the opposition criticise keenly the policies of the government, and may even desire to oust the holder of power; but at the sametime they are conscious of the responsibilities of taking upon themselves the reins of government in case they are successful; so naturally they have to abstain from unnecessarily criticising those measures which are wisely chosen and framed. As Sidgwick has said, "the dual party system tends to diminish the instability that attaches to parliamentary government, and renders the criticism of governmental measures more orderly and circumspect."

4. In growing outside the framework of the state, the political parties enable governmental change to take place as public opinion changes without disturbing the whole political machinery.

5. In a presidential form of government (the United States), it serves to avoid deadlocks in the legislature by exerting influence from outside.

Evils of Party Government.

1. The party system is opposed to the spirit of democracy because individual opinion which is the essence of free government has to be suppressed. It is a device for preventing the expression of general will, obscuring public opinion and setting up a new form of despotism.

2 In cabinet governments there is every possibility of executive power going into the hands of orators and parliamentary tacticians, who are devoid of administrative skill

3 The party system by its very nature tends to pass into the hands of caucuses or private cliques, which arrange political struggles in such ways as to suit themselves From such struggles the best citizen generally stands aloof

4 Party criticism becomes sometimes factious, and a good legislation has to be avoided on that account Sometimes a popular legislation has to be passed, not for the good of the country, but simply to catch votes

5 Although it diminishes the instability that attaches to parliamentary government, but as Sidgwick has said "it often tends to make party spirit more comprehensive and absorbing, party criticism more systematically factious, and the utterances of ordinary politicians more habitually disingenuous"

6. It brings about bitterness of feeling at election times, and sometimes peace and public tranquility is threatened

Practical Working Alternative —Sidgwick has suggested some remedies for the evil effects of party government They are partly political, and partly moral The former naturally vary according to the precise form of government adopted, and the latter will depend on the condition of political morality.

(i) The influence of party on government would be materially reduced in a presidential form of government, if the supreme executive is elected by the legislature, with subordinate officials holding office independently of party ties

(ii) Certain matters of legislature and administration may be withdrawn from the control of the party system

(iii) Preparation of legislation may be entrusted to parliamentary committees other than the executive cabinet

(iv) Certain headships of departments, in which a peculiar need of knowledge, trained skill, and special experience is recognised might be filled by persons not expected normally to retire with their colleagues

(v) The cabinet ministers need not resign office, simply because the legislative measures proposed by them were

defeated, but only to resign when a formal vote of want of confidence was carried against them in the house of representatives.

(vi) The introduction of the Referendum to a limited extent would at any rate reduce the danger that a minority may force through legislation measures not approved by a majority of the assembly that adopts it.

(vii) The operation of the party system might be checked and controlled, more effectually than it now is in England and the United States, by a change in current morality of the people. The duty of educated persons should be to aim at a judicial frame of mind on questions of current politics.

Lessons from the Great War—One great lesson we have learnt during the great war, that the political parties can work best in democratic countries only. The monarchical from of governments were all overthrown, and that was due to the one-sided activity of the parties concerned. The parties were not only divided in some kind of real differences of public utility, but separated as two poles asunder on the very basis of the constitution of their government. In Russia a secret society called the Nihilist Party was working from a long time to overthrow the monarchial form of government. During recent years a new spirit of Bolshevism gained footing, and the party succeeded in bringing about a complete overthrow of the Russian Empire. In Germany, the Social Democratic Party took the best opportunity of the weakness of the government, and at about the close of the war, compelled the Kaiser to abdicate his throne for a republican form of government. In England, however, the party system worked in a different way. The war brought adherents of the two great parties close together, and they instead of dividing widely worked in harmony. Even a ministry was changed, but that did not bring about a complete upsetting of the government. Thus it falsified the oft quoted draw back of party government—that it encourages loyalty to party at the expense of the loyalty of the state A coalition ministry was formed, and all emergency measures were passed smonthly and without any delay. Similarly in France, all parties joined together and submerged their party differences for the greater needs of the country. All these were possible, therefore, in the two democratic

countries The party system, as we have said before, leads to the stability of the democratic government, and this fact has been amply justified in the great war But the other factor we also notice in this connection is that during war a party government is not very effective All important parties have to sink their party differences and concentrate their joint energy for the safety of their national government The executive is given a free hand to deal with the crisis and is supported by the whole country The party government practically ceases to operate, and at times is not congenial to the safety of the empire

Political Parties in England At present there are three important parties in England, *viz* the Conservatives, the Labour and the Liberals The Conservatives have more respect for existing institutions, and favour an aggressive foreign policy The Labour party aims at legislation favourable to the working classes, wider democracy, and the application of various socialistic principles The Liberals are more democratic than the Conservatives, but they are more interested in internal than in foreign powers In the last election (1924) the Conservatives have gone into power Besides these, there is a smaller group, called the Independents, who side either with the Labour or the Liberal party

Party Organisation —The organisation is centred round the party leaders in the House of Commons One man is recognised as the head of the party, and his views are shared by the rest Each party has its central office in London

In each polling district of parliamentary constituency, members are affiliated to be the active adherents of a party This body elects representatives to a party council of the whole constituency, and from this constituency council representatives are sent to the county or borough council Finally this last council elects representatives to the central body at London The party leaders who usually hold office in Parliament or the Cabinet dictate the policy of the party by open letters or addresses and formulate its platform Thus the leaders in Parliament exercise a controlling influence on the entire party organisation of the country. Within the Parliament itself the leaders take care that large number of members attend the Parliament to support any bill. The "Whips"

induce the members to attend in sufficient numbers, and give necessary information to the members.

Methods of Control: The government controls the working of election according to certain rules and regulations Besides these, the central offices of each party are really sort of permanent executive committees, that distribute political literature, *recommend names to constituencies in search of* candidates, and aid in election expenses. There are numerous party clubs which serve to distribute party opinions.

Political Parties in the United States (i) The Democrats who are conservative oppose the foreign colonial policy. (ii) The Republicans stand for the control of subject peoples in the interest of expansion and commerce. Bryce has remarked, that of late they have no distinctive principles, and therefore no well-defined aims in the direction of legislation or administration. Parties exist practically for the sake of filling certain offices and carrying on the machinery of Government. They can be distinguished only by their organisation.

The Party Organisation: The parties in the United States are highly organised, because of the disjunction *of legislative and executive powers which requires* a bond in the shape of a party organisation, and also because of the vast extent of the territory from which it is impossible to select a president, a governor or a secretary. At present, the scheme of the party organisation is as follows:—Each party is held together by a series of committees and conventions. In every district, a meeting of party adherents is held for the selection of candidates. This meeting is called the "primary" or 'caucus" Its function is to appoint the local standing committee, nominate party candidates for election, and send delegates to the party meeting of a next large unit. This *meeting or "convention" as it is called, similarly appoints* a committee, makes nomination for office and sends delegates to the state convention. This body again nominates candidates for the governorship etc, appoints the state party committee and sends delegates to the national convention held once in four years. It is held for the selection of the President of the United States out of the party candidates. The national convention of each party consists twice as many delegates

as it has members in congress together with delegates from its dependencies The convention thus forms the national platform of the party and makes its nominations for the presidency In the Republican Convention a simple majority suffices but in the Democratic Convention a majority of two third is required

This highly organised and complex scheme has opened the way to many abuses The primary falls totally under the control of professional politicians' and their hangers on This gives rise to the 'party ring' and 'party boss' which serve as instrumens of political control The ordinary citizens, therefore, are indifferent and stay away from attending the primary The nature of the party machine therefore, repels the honest, and attracts the unscrupulous

Methods of Control —As parties develop, they receive legal recognition Dealey in his "Development of State' has shewed, how the Government controls the working of the party system 'The state as a rule specifies the time, place and manner of conducting elections and in some of the commonwealths even regulate the Primary or Caucus It may regulate the system of nominations, fix the form of ballot and provide officers to supervise the polls and to count the ballots It may even bear the expenses of conducting Primaries and the polls, and may legislate against corruption and bribery and limit the amount of legitimate expenses By law it defines which persons may exercise suffrage privileges at the polls and may also define suffrage rights at the Primary Voting has been made compulsory in certain communities but with small success"

Political Parties in France The party system in France has not been remarkably successful for the following reasons —(1) There are so many parties, that no single one can ever long command majority of votes in the Chamber of Deputies As a result, measures can not be carried simply because the leaders of one party do not agree, and consequently they have to appeal to a number of groups on their own merits The parties represented in the Chamber of Deputies are the Nationalists, the Conservatives the Republicans, Socialists Radicals and their subdivisions The government is carried on by the temporary coalition of these

groups. (ii) The party leaders are irresponsible as there is no group strong enough to control all the others. (iii) Lack of party organisation prevents party unity. (iv) Party contests are local rather than national, and personal rather than political.

The defeat of French Ministry does not mean the transfer of political control from one party to another. The defeat of the British Ministry does mean such transfer.

In France, the government is based on cabinet system, but as a result of the party situation, all ministers are coalition. ministers representing several party groups in the Chamber of Deputies. A change of ministry in France does not mean a change of party or the transfer of political control from one party to another. If the ministry is defeated, the political groups again combine and form a cabinet, and so the outgoing ministers have a good chance of again coming into power, through the coalition groups representing their party.

In England, there is a dual division of parties – the party in power and the party in opposition The opposition leaders are always conscious of the responsibilities of taking upon themselves the reins of government in case they can oust the holders of power Hence in England, the defeat of a ministry means the transfer of political control from one party (in power) to another (the party in opposition).

Political Parties in Germany. In Germany before the war, there were about a dozen parties represented in Reichstag, but it did not affect the stability of government, as there was no cabinet government like that of France or England. After the end of the war, there have been six important parties, viz, Socialists, Central Party, German National Party, Democrats, Communists and the Popular Party. The new constitution has adopted cabinet form of government, so that the executive have to depend on the party support The party system in Germany has made it impracticable for any single party to secure an absolute majority of seats necessary for forming a government. But they have something in the nature of a common denominator and some bonds of affinity which enable them to enter into working partnership with one another to form the government as well as the opposition.

Questions

1 What is meant by party? Discuss the merits of the two party system and explain how party organisation is maintained in the modern English world (C U 1913)

2 What is Party Government Describe the parties existing in any two or three modern states and the method of forming and controlling them (C U 1917)

3 What are the advantages and what the evils of Party Government Can any practical alternative be suggested? What lessons can be learned from the experience of the Great War in recent years (C U 1918)

4 Discuss the merits and defects of the party system Have there been any changes in the party system of England during recent years?

5 Give the characteristics of the party system in France, what are the reasons for which it has not been as successful as the party system in England (C U 1921)

6 'The party system in France has not been remarkably successful? Why not? The defeat of French Ministry does not mean the transfer of political control from one party to another The defeat of British Ministry does mean such transfer Give reasons (C U 1924)

CHAPTER XXIII

LOCAL GOVERNMENT

Necessity for Political Division

1 *Distribution of work of government* In every state there are certain interests which are of general nature affecting the entire state, and there are others which are of local concern Hence the organs of government are divided into central and local bodies The burden of work is thus distributed

2 *Efficiency* The people take greater interest in acts of government concerning their own locality Local governments, therefore, increase the efficiency of government

3. *Educative agency* : The people learn the art of government by acquainting themselves with public affairs. "The local government thus provides an excellent school of training for the wider affairs of central government."

4. *Economy* : The local governments provide their own funds, and thus relieve the financial burden of the central government to a certain extent. The central government gives grant when necessary, and authorises the local governments to raise money either by loan or by taxation for certain purposes.

5 *Expediency* : Some works are national in their scope and effect or are too expensive to be undertaken by a local community, and some regulations are effective only when they are uniform over the whole state, *e.g.*, post office. Other state functions affect only a limited area, and these should be controlled, and the cost borne by those who benefit by them, *e.g.*, sanitation. At the same time, there are many state functions which are both national and local, and the control is divided between central and local governments, *e.g.*, education and taxation.

Local Government in England The whole country including Wales is divided into sixty-two administrative counties, each of which is governed by an elected council. Counties are divided into Districts, each of which is governed by an elected representative council; and the Districts are subdivided into Parishes, and those with more than three-hundred inhabitants have elected councils, and the remainder act through direct assemblies. The system is, however, not symmetrical, as except London, whose organisation is exceptional, the cities are county boroughs or urban districts governed like rural units of the same degree.

Local Government in France: For the purpose of local administration, France is divided into Departments. Departments are divided into Arrondissements. Arrondissements are divided into Communes. Unlike England, the symmetry of local government is perfect throughout.

Local Government in India: For administrative purposes the British India is divided into nine major provinces under Governors, and six minor provinces under Chief Com-

missioners Resident and Agent, each of which is called a local government The major provinces are Bengal, Madras Bombay Behar and Orissa the United Provinces the Punjab Assam and Burma The provinces under Chief Commissioner are the North West Frontier British Beluchisthan, the Andaman and Nicobar Islands and Delhi Coorg is under British Resident of Mysore and Ajmere under British Agent in Rajputana

Constitutional Position of Local Governments In *Unitary States* the local units are the creatures of the national government, which in exercise of its sovereign power can modify or destroy them at pleasure In *Federal States*, the component commonwealths are created by the constitution and neither the federal government nor the commonwealth governments can modify destroy or encroach upon each other Such component states though they are local governments are legally fundamental parts of the national organisation Each component state also possesses a central and local government, and they exercise their respective functions

Relation between Central Government and Local Governments

Principles governing the relation between central and local governments The characteristic of all modern states is that the central government invariably controls relations with other states and questions of general policy, whereas the administration of local concerns is left to the local bodies The principle of local self government requires that local units be granted a fair degree of independence Two methods have developed—(*i*) the central government may control legislation, leaving administration in the hands of local affairs, (*ii*) or the central government may assign considerable legislative powers to local governments, retaining a direct supervision over administration

Comparative Advantages and Disadvantages —

(*i*) *Legislative centralisation* sacrifices the interest of the local community in making insufficient provision for the execution by local agents of the local will

(*ii*) *Legislative decentralisation* sacrifices the interest of

the state in making difficult the execution of state will in case of conflict between the state and the local communities.

(iii) *Decentralised administration* allows officials to be drawn at intervals from the people to whom they are naturally attracted by common sympathy and interest. It is a *popular government*. See pp. 139—140.

(iv) *Centralised administration*, on the other hand, is in the hands of a governing class whose interests are sometimes distinct from those of the population. It is a *bureaucratic government*. See pp. 154—155.

England: In England the system of local government is characterised by *legislative centralisation* and *administrative decentralisation*. Laws are passed by the central legislature, and the administration is left in the hands of the local officers. The central legislature prescribes the laws which the local governments ask for their local needs The central government, however, is absent in local administration, and there is no person like the French Prefect to superintend or guide over the local bodies. The Local Government Board exercise some control over the administration, but the spirit in which the control is exercised bespeaks of co-operation and advice rather than centralisation.

In financial matters the legislature in England simply prescribes the objects on which local funds may be expended, and sets a limit to the amount of the tax and the loan to be raised

France: The characteristic feature of the local government is the system of *administrative centralisation* and *legislative decentralisation*—quite the reverse of what is prevalent in England. At the head of each Department is a Prefect who is appointed by the President and is assisted by a General Council The Prefect occupies a double position. As the agent of the central government, his duty is to look after the general administration; and as a local officer, carries out the resolutions of the general council. The Arrondissements and Cantons are mainly convenient administrative districts under Sub Prefects. The Communes are vital local units, and have each got a municipal council. The Mayor is both the executive head of the Commune, and agent of the central government working under the Prefect. The entire adminis-

tration from top to the bottom is highly centralised The central government not only superintends the local elective bodies but also lays down the duties of local authorities who have loyally to carry out its will Although the local authorities are not hampered in their action by any kind of legal restraint the character of the adminstration takes the colour from the character of the central government

In France the central government can disallow the expenditure of an objectionable character and enforce certain service It has therefore greater control over the expenditure of the local government than in England

United States Read—Powers rights and obligation of commonwealth governments, pp 160

Questions

1 Compare Local Governments in England France and India (*C U 1917*)

2 Give a broad outline of the organisation of local governments in France (*C U 1923*)

CHAPTER XXIV

COLONIAL GOVERNMENT

Motives for Colonial Expansion Motives may arise from two different sources —

1 When individuals take the initiative

2 When the state takes the initiative

Individual Initiative The colonial expansion attributable to individual initiative is due to the following causes — (i) Over population in colonising countries (ii) Dissatisfaction with home surrounding such as religious conflict oppression economic pressure and longing for indpendence or better material condition (iii) Spirit for missionary propaganda or a combination of secular or religious aims for uplifting an uncivilized

or half-civilized people. (iv) Spirit of individual adventure, exploration or enterprise, and the desire for utilisation of the new discoveries of the world. (v) Demand for participation in the commerce of the world. This demand is the germ of colonial development which covers the whole world to day. It leads to political relations with the nations with whom the other nation comes in contact. (vi) Desire for the investment of capital in exploitation of mines, construction of railways and irrigation works, and the establishment of large plantations (tea plantations of Assam) and banks which ultimately lead to political control over the country.

In all these respects the individuals actuated by the new enterprises attempt to conquer new territories, for which they take the whole *responsibility if the attempts are unsuccessful*; but if they are successful, they are approached by the Home Government, because they bring an additional asset to the empire.

2. *State Initiative*: Commerce and capital are no longer above the interests of the state. As guardian of the economic interests of the individuals, it is bound to extend the territorial and political sphere of its activities as commercial and capitalistic movements extend. This leads to the establishment of what are called *Spheres of Influence*, because the state is then recognised to protect the territory and its people from external interference. Hence a certain amount of interference with the internal affairs of the region, such as peace, order and sanitation etc. becomes unavoidable. In other words, state interference with the political administration of a territory slowly but surely proceeds from commercial and capitalistic relations of the people, and as these relations extend, the area of political relations is bound to extend as well.

Colonial Policy of England.

History of its Development: Early in the seventeenth century, France and England vied with each other in settling in North America. In the beginning, besides granting charters to the trading companies, England did not concern herself much with colonial affairs. The French Government, on the other hand, helped the colonists with ships and money. With the increasing prosperity in trade and commerce the eyes of the British government were opened. Series of Navigation

Acts were passed forbidding the colonists to trade with other states and demanded a monopoly for English shipping. Subsequently, restrictions were put on American manufacture, and lastly, a direct tax was levied on the colonists for defraying of expenses in the long colonial wars with France Selfish legislation like these caused much disaffection which ultimately culminated in the American War of Independence After the alienation of American colonies from the mother country, England attempted to strengthen her control over the remaining colonies, but owing to the growth of democratic spirit and numerous other causes, England changed her short sighted old policy, for the present system of colonial self government

Present Colonial Policy The present colonial policy of England has been to grant complete self government to colonies with white inhabitants, and to others such form of self government will be granted as their circumstances seem rightly to demand The principle of political training for self government has been recognised, but so long the population is not duly qualified for self government, she claims to provide a just and impartial administration.

Responsible self government has been introduced in Canada, Australia New Zealand, South African Republic aud Irish Free States Representative Colonies like Jamica, British Guiena and others possess representative institutions, but not responsible governments In the Crown Colonies of Straits Settlements Trinidad and others the Crown has control over both legislation and administration The Indian Empire is not considered as a colony It is administered by the agents of the Crown A crude beginning for responsible government has been made

French Colonial Policy The paternal policy of the French Government prevented the colonies from becoming self supporting The colonial trade was monopolised by France The central government controlled colonial policy, and it cared very little for the welfare of the colonists In her long contest with England for colonial expansion, France lost many of her original colonies

The present colonial policy of France is to maintain her centralised system, but it has extended franchise rights to the

natives of colonies. France alone admits colonial representatives to her national legislature.

Dominion Status The self-governing colonies of the British Empire, Canada, Australia, New Zealand, South African Republic and the Irish Free States are commonly known as the *Dominions*. It is very difficult to define their status, and to state what the exact relation is between them and the mother country. At the Imperial Conference held after the War, the Dominion Premiers did not desire to have a rigid definition of their status, as it would interfere with their autonomy. It is understood that "they are autonomous communities within the British Empire, equal in status, and in no way subordinate to one another in any aspect of their internal or external affairs, though united by common allegiance to the Crown, and freely associated as members of the British Commonwealth."

Extent of Autonomy: The Dominions are practically autonomous so far as their *internal affairs* are concerned. They are rulers of their own hearth and finance, administration and legislation as far as their domestic affairs are concerned.

The position of the Dominions in reference to *external affairs* has been completely revolutionised after the war. The Dominions have been given equal rights with Great Britain in the control of the foreign policy of the Empire. The control of Britain over foreign policy is now vested in the Empire as a whole. The Imperial Conference consisting of all Dominion Premiers and Delegates now determine all international policy. It is apparant that the relationship between the Dominions and the Imperial Government is daily drifting towards a mere defensive and offensive alliance and allegiance to a common sovereign. It is through mutual good will that they are now free and equal partners in the British Empire.

Sir Sidney Low has described the international position of the Dominions in the following terms:—"In the negotiations which followed the war, the British Self-Governing Dominions gained international recognition. They are separately represented in the League of Nations, and have asserted their right to appoint deplomatic agents abroad and to conclude treaties with foreign Powers. Those treaties must be made in the name of the King but they need not be negotiated by the British Foreign Office."

Nature of the British Imperial Control over Colonial Administration and Legislation Imperial control is exercised in two ways—administative, which includes financial control, and legislative

The *administrative control* is exercised only in a small and indirect way The executive government of the Dominions is vested in the Governor General who is the king's representative, and an executive council of ministers who are appointed by the Governor General The Governor can receive no instructions from the Imperial Government and he is advised on the affairs of the Dominions by the local ministry which is responsible to the legislature As the King's *personal* representative he communicates directly with His Majesty, and not through the Secretary of State He can cause the ministers to resign by his passive attitude of refusal to support their advice and can nominate fresh ministers Besides this constitutional power he can exercise great influence over them by the force of his personal character his social position, his ability and experience He can refuse to grant pardon to sign a contract or to agree to the deportation of a native chief All such control is rarely of a coercive nature and is exercised diplomatically with an eye to the rights and interests of the both The Governor is thus a connecting link between the Crown and the Colonial Government

In *financial matters* the Imperial Government is not responsible for the finance of a self governing colony and does not interfere unless imperial interests are directly involved or unless a financial measure is so radically vicious as to reflect discredit on the whole Empire

Control over *legislation* may be exercised either by the (*a*) Governor as representing the Crown, (*b*) the Crown in Council or (*c*) the Crown in Parliament

(*a*) Every bill passed by the local legislature must go before the Governor, who may reject it or assent to it or reserve it for the future signification of Royal assent The Governor is bound to reserve some bills according to the terms of Royal Instructions accompanying his appointment, and he may reserve others on account of their exceptional nature The bill in such cases does not come into force until a Royal assent is received If the Governor assents to

a bill, the Crown still reserves the power to disallow it within two years from its communication to the colonial secretary, but the power is not exercised unless Imperial interests are affected.

(*b*) The Crown-in-Council can also legislate for certain types of colonies under certain restrictions.

(*c*) The Crown in Parliament can always legislate for the colonies, and may repeal or override any colonial law or constitution, but in practice, the British Parliament would never legislate for the Dominions without thier consent, and would not pass any law that in any way, might affect the individual rights and privileges or fetter the legislative discretion or authority of the Dominion legislatures. The right of the Imperial Parliament to interfere in colonial legislation can be exercised only when acts passed in the colonies are likely to operate beyood their boundaries, or when they are repugnant to any order or regulation made under the authority of any act of Parliament.

Imperial Federation The growing spirit of Imperialism is one of the most significant characteristics of the English political life of to day. It is desirable for England, which has nearly reached its limit of expansion, to form a closer union with its component states so as to be able to maintain and secure her own position against the rival foreign countries. There are good reasons for this desire of drawing the colonies and the dependencies closer to the parent state.

(i) The natural resources of England are not sufficient to meet the requirements of the rapid increase of population. The result is that thousands migrate to other countries. The colonies have vast natural resources which can afford to sustain an immense population. It is desirable to secure emigrants of their own nationality instead of foreigners.

(ii) The commercial supremacy of England is threatened by the competitions of Germany, the United States and Japan. British goods are shut out form many countries by hostile tariffs. England can with the help of her colonies build a tariff wall against such countries, and arrange a preferential tariff amongst her component states

(iii) The vast armaments of European countries especially those of Germany which were used in the last war must force

England to act in co operation with her colonies for military *defence and in order* to maintain her proud position of the Empire

Thus the "joint maintenance and control of one imperial military and naval force for the whole empire, a league for mutual defence against foreign attack and a common foreign policy to fight hostile tariffs would be of the greatest advantage to England, as well as to colonies"

Principal Difficulties —

1 An Imperial Parliament and an Imperial Executive should be erected in which the mother country and the colonies would be represented Such drastic method, however, to be successful, must take a long and gradual process of development

2 There are many grounds of objection to allow representations from colonies in both the Houses of present English Parliament (i) Direct representation from the colonies is not any easy task (ii) It will lead to a confusion arising from conflicting powers, interests, and duties (iii) It will be awkward when measures relating solely to England would be discussed by the colonial representatives (iv) Some of the Dominions are unwilling to be taxed by a body in which they will have a relatively small representation, e g. New Zealand

3 That there may be a colonial council of advisers to assist the British Cabinet *in colonial matters But as this* would be only an advisory body, its advice would he of little value or weight

4 The general objection against such federation is as Prof Leacock says, "if a federal parliament is formed, it obviously will not exercise authority over the internal affairs of the British Isles There must, therefore, be two parliaments in Great Britain itself—the insular parliament and the supreme federal body It will not therefore be sufficient to admit colonial representatives to the parliament at Westminister, but will be necessary to totally reconstruct the legislative power in the United Kingdom," which the British political temperament would hardly allow.

5. "The aim of the prevalent socialism is to gain possession of political power, with a view to the socialisation of the means of production, distribution and exchange, ... we may call it revolution if we use the word as merely applying a vast and fundamental change in human affairs It has no necessary connection with force or violence." Discuss this with special reference to the distinctive features of socialism. *C. U. 1915.*

6. What do you understand by Paternalism and "Laissez-Faire" as applied to the system of government? *C. U. 1918.*

7. Describe briefly the essential features of the Individualistic and Socialistic functions of Government. Point out the errors in both the theories. *C. U. 1925.*